REPORT
OF THE COMMITTEE
ON
INDUSTRIAL LICENSING

1979

With Compliments from
the Convenor and Members
of the Committee on Industrial Licensing.

CONTENTS

*** ***

February 27, 1979.

Dear Mr. Minister:

Re: Report on Industrial Licensing
by the Industrialists' Committee.

In October 1978, you appointed a Committee to suggest ways and means of expediting Industrial Licensing Procedures. This Committee appointed me as its Convenor and in this capacity, it gives me great pleasure to submit the following Report on behalf of all the Members of the Committee. The Committee would like to express its appreciation to you not only for its appointment in the first instance, but also for the sustained support and valuable assistance you and your Ministry have extended to it at every stage of its deliberations. We know that we have been called upon to submit our Report in the wake of earlier Ramakrishna Study Group Report on the same subject submitted only as late as February 1978. That, despite the commendable work done by this Study Group, you have thought it fit to invite the views and recommendations of the representatives of industry is a proof of your earnestness in seeking to improve and expedite the processes in the Industrial Licensing Systems. The Committee would also like to take this opportunity of stating its appreciation of the latitude you have permitted it to discuss not only the narrow technicalities of Licensing Procedures, but also the broader issues involved in the framing of Industrial Policies.

We would like to follow up our expression of gratitude to you by also expressing thanks to Mr. S. S. Marathe, Secretary, Ministry of Industry; to Mr. P. C. Nayak, Secretary of the Secretariat for Industrial Approvals, Brig. Shahaney of DGTD and, of course, to Mr. S. R. Kapoor, whose services were made available to us. To all these Senior Officials of the Ministry, we hasten to express our warm appreciation of their patience in clarifying several issues that we brought up before them.

Our thanks also go to the various national Chambers of Commerce but in particular to FICCI, Assocham, AIEI and the AIMO for the various Memoranda presented by them, and the time they release to discuss various points and principles with us.

You will recall, Mr. Minister, that the specific terms of reference of our Committee were as follows :-

a) To review the existing procedure relating to grant of letters of intent/industrial licences, approvals for foreign collaboration, import of capital goods registration with DTGD, etc., and

... cont

b) To suggest ways and means of improving procedures to eliminate avoidable delays and to make recommendations in this regard.

While the Committee has carefully considered all the suggestions made by various organisations and their representation, it has not been possible to accept all the contentions made before us. The responsibility for the views expressed in this Report, therefore, fall squarely on this Committee.

The Committee's work, thanks to the encouragement given by you and your Senior Officials, has extended to various areas of policies and goals currently adopted by the different Ministries of the Government of India in the implementation of Industrial Licensing. While we have taken courage from this permission to make suggestions in a wide range of areas, it has naturally made it difficult for us to live up to the original deadline of December 31, 1978.

We believe, however, that the quality of our Report may perhaps compensate for the additional time that we have taken to reach our main conclusions and to make our principal recommendations. For ease of presentation, we have summarised our principal findings and recommendations in the form of a summary prefacing our full Report.

You will notice, Mr. Minister, that while we have been concerned with the saving of time in the disposal of Industrial Licences, we have been even more concerned in ensuring that the changes that need to be brought about in the system of Industrial Licensing must be of an enduring nature. We have, therefore, spread before us the panorama of the Indian Industry as a whole, and bearing in mind that public sector enterprises have also to undergo the process of Industrial Licensing, we have made a number of far-reaching recommendations which, we believe, will not only expedite the procedures involved in Industrial Licensing, will not only clarify the principles and strengthen the institutions involved in the early fructification of industrial projects, but will also build a unity of purpose and approach so as to hasten the industrial development of the country.

We do hope that our Report will not be swept off by the cries and criticisms of populism, and that our recommendations will be seen as part of a new approach that needs to be ushered in at the policy levels so that the sharply reduced rate of industrial growth during the decade of 1966-67 to 1976-77 (as compared to the previous decade) may now be reversed. It is our conviction that the conditions within the Indian economy are now ideal for

... contd.

securing a rapid rate of growth in industrial production and in industrial investment, consistent with the overall objectives of our Government. Our rate of savings is now higher than the rate of investments, and this must mean that what the country is reall short of is not investible resources, but of projects, which are unable to get off the grounds due largely to delays in the licensing system. Another major constraint in the system of Industrial Licensing, namely, foreign exchange, is also now rapidly and plentifully available. It would be indeed a serious blow to the economy, if this great opportunity of stepping up the rate of industrial growth is missed at least partly due to the rigidity of the Industrial Licensing System. If ever there has been a time to bring about a relaxation in the system of Industrial Licensing, it is now, blessed as the economy is with a high rate of savings and even higher rate of inflow of foreign exchange.

We also do hope that we shall not suffer the fate of being described as taking the economy back into a laissez-faire state; indeed, if that were so, our principle recommendations to strengthen both the SIA and the DGTD would not have been made in the first instanc Hence, much as the Committee appreciates the quest for saving in time, the Committee looks upon the change in the total situation. The Committee does not claim that it has prescribed panacea for all ills of our industrial policy. But it sincerely hopes that a fair trial to the concepts and policies recommended by it may be a first step towards simplifying the system of Industrial Licensing policies and procedures and may pave the way for a more steady and sustained economic growth.

The Committee throughout its deliberations has given me a great sense of commitment and cooperation and I, as a Convenor, deem myself fortunate that the entire deliverations have been conducted not only in a spirit of cordiality, but with each individual member actively participating and contributing his own ideas.

To all the Members of the Committee I owe, therefore, a special expression of thanks, which I now make.

Finally, while I am doubtless happy about the unanimity with which this Report is being submitted, I have got to record the letter of Mr. H. Bhaya, Director of the Indian Institute of Management, Calcutta, addressed to you on Dec. 1, 1978 resigning from the Committee for reasons explained in his letter to you. The Report, therefore, does not carry his signature.

In case you feel that our Report calls for a discussion to clarify some of the issues raised by us, we need hardly say how privilege

... contd.

we shall be to have such a meeting with you and/or the Senior Officials of your Ministry.

Warm regards,

Yours sincerely,

Sd/- * * *

H. P. Nanda
Convenor.

Hon'ble Minister Mr. George Fernandes,
Minister of Industry,
Udyog Bhavan,
New Delhi - 110 011.

SUMMARY OF PRINCIPAL CONCLUSIONS AND RECOMMENDATIONS

The Committee wishes to express its sincerest appreciation of the opportunity offered to it by the Ministry of Industry to express its views on both the procedures and the policies which have direct or indirect bearing on the system of Industrial Licensing.

(1) The Committee, after a historical review of the evolution of the industrial licensing system since the enactment of the Industries (Development & Regulation) Act (IDR Act), has come to the conclusion that sincere efforts have been made on specific occasions to effect liberalisation, but these efforts being basically of an ad-hoc nature, have failed to stem the tide of increasing regulatory powers vested in the system of Industrial Licensing.

(2) The economy in general, and industry in particular, has therefore, paid the penalty of scarcities and rigidities, and while industrial licensing cannot be said to be the only factor inhibiting the rapid growth of production and investment in industry, it is certainly one of the most important factors, since without an industrial licence industrial investment cannot fructify at all.

(3) It is the unanimous opinion of the Committee that circumstances have now placed the Indian economy in an ideal position to step up both the production and the investment in the industrial sector. On the one hand, the rate of savings has tended to exceed the rate of investment, clearly implying that the shortage today is not so much of investible resources but of projects, which are unable to get off the grounds due largely to delays in the licensing system. On the other hand, the foreign exchange constraint which has been another important ingredient in the rigidity of industrial licensing, has also virtually disappeared. The Committee cannot stress too emphatically, therefore, that the time is now opportune to seek a massive increase in industrial production and investment. But for this to happen, it will be necessary to take bold and pragmatic steps in the field of industrial licensing, since without such steps the ability and agility of the economy to respond to these opportunities is stifled.

(4) The Committee, therefore, expresses its belief that Government, in appointing it, has, in fact, recognised the immense contribution that liberalisation in industrial licensing can make towards rapid economic growth consistent with the claims of social justice and the demands of fuller employment. The Committee believes that its recommendations are in harmony with this overall approach of the Government.

(5) The Committee cannot escape the conclusion that the marked deceleration in the annual growth rates of industrial production and in real capital formation which has taken place during the decade 1966-67 to 1976-77, is, to a major extent, the outcome of the increasing regulations that have come to be imposed in this decade of regulation and stagnation. There have been periodic attempts at liberalisation, no doubt, but these have been too few, and in a number of cases, what has been conceded in principle has been defeated in the details of implementation.

(6) The Committee believes that no effective and lasting changes can be brought about either in our policy framework or in our industrial licensing procedures so long as certain attitudes continue to prevail in every major segment of Indian industry both in the public and the private sectors as also in the attitudes of scientists, of the bureaucracy and of government in general, at the Central as well as State levels.

(i) It is imperative for this intellectual breakthrough that the nation be not saddled with the simultaneou achievement with equal degree of emphasis on a number of socio-economic goals, some of which are in direct conflict with each and one another.

(ii) It is even more imperative that the system of industrial licensing must not be used as a multi-purpose mechanism for achieving these goals in a simultaneous manner. The fundamental cause of the delays in the industrial licensing system stems from this fact of usage of the industrial licence to secure simultaneously all the socio-economic goals.

(iii) Therefore, re-orientation is required, on the one hand to convince the policy-makers in the country not to seek to achieve all goals simultaneously, and to rotate' such goals over different time periods, as is done in different countries; and simultaneously innovative policy must be demonstrated in the use of fiscal and financial incentives to achieve the socio-economic goals instead of loading the industrial licensing system with the burden of achieving such goals. The Committee therefore suggests that a fundamental attitudinal re-orientation is an essential prerequisite for an effective and lasting simplification of the industrial licensing system in India.

(iv) The Committee would also invite the attention of Government to what the Ramakrishna Study Group has already noted, namely, that whereas by law and by logic, the innumerable regulatory legislation and the institutions that have come into existence after the enactment of the IDR Act in 1951, should have lessened the regulatory powers implicit in this Act, tragically "these innumerable powers" of legislation and institutions have in fact reinforced the regulatory powers. The time has, therefore come to "unshackle" industrial licensing from as many regulatory aspects as possible, since these regulatory mechanisms have already been planted into the economy through a number of other channels.

(v) The Committee is also convinced that the belief, so assiduously cultivated during the last two decades, that industrial growth requires a system of industrial licensing which divides industries into "boxes" has to be discarded. The truth is that, barring a few very special cases, the growth of the large and the medium sectors of industry - both in the public and the private sectors - tends to bring an even sharper growth in the small scale industrial sector. The Committee enjoins the economic policy-makers to recognise that the dynamics of modern economic growth involves the complementary relationships between the large and the small scale sectors of Indian industry. There is no surer recipe of throttling the growth of the small scale sector than by placing an

embargo on the rapid development of the large-scale sector. Empirical studies substantiate and economic theories support this central contention, which is overlooked in current policy formulations.

(7) The Committee would, therefore, earnestly call upon Government for reconsideration of the basic premise of the current system of industrial licensing. It must be reconsidered whether the socio-economic goals can be, without prejudice to the claims of social justice, "rotated" over different time periods; it must be examined how far other economic policy instruments, instead of being in addition to, can act as substitutes for industrial licensing. Indeed, with some boldness, the Committee ventures to suggest that the time has come to ask whether industrial licensing in its present form is at all the real answer to the demands of Indian economic development.

(8) The Committee recognises that the issues it raises may be easily misrepresented as a retreat into a laissez-faire economy. What can ot be challenged, however, is the necessity of inducting into the Indian industrial licensing system, a mechanism for continuously updating over every 3 or 5 years the "cut-off points" into which the various "boxes" of Indian industries are currently divided by the present system of industrial licensing policy. This would be justified not only by the demands of continuous inflation, but by the dynamics of rapid economic growth. The Committee, therefore, calls upon those in charge of administering the industrial licensing system to continuously review the demands made by both inflation and economic growth in respect of these 'cut-off points'.

(9) The Committee recommends 3 central areas in which the cut-off points' must now be redefined so as to (a) considerably reduce the workload of the licensing authorities; (b) take into account the erosion caused in the real value of investment; and (c) spur economic growth without jeopardizing goals of creating new entrepreneurship or new sources of employment.

(10) After a most careful examination, the Committee feels that the time has now come to delicense the core sector of the

economy for a variety of reasons which are economically justifiable.

(11) Till such time that the above recommendation can come to be implemented, the Committee would recommend that subject to certain limitations such as the reservation of industries for the small-scale sector, the time has come for new "cut-off points" to be established. These are indicated below.

(12) Industrial Licensing should be exempt for all units for projects with value of assets upto Rs 15 crores provided they satisfy certain conditions outlined in the Committee's report. In other words, only projects above Rs 15 crores should require industrial licences.

(13) Again, subject to specific limitations mentioned in the report, the limit of Rs 20 crores for MRTP Companies should be raised to Rs 45 crores for MRTP companies. Only where a company is a "dominant undertaking" or if the value of its assets exceed Rs 45 crores, should it be covered by the MRTP Act.

(14) The Committee notes that the definitions of both "the market" and "the value of assets" need to be brought into line with economic rationalities. Once this is done, dominant undertakings will, henceforth, be defined as undertakings with more than 1/3 of the market share and with value of assets of Rs 3 crores or more (redefined by the Committee).

(15) The Committee emphasises that if a multi-product company is dominant in one product, then it should be considered dominant only in respect of that particular product and not in all other products. Similarly, if a company, with its elaborate R & D work, brings out a new product into a market, such a company is considered dominant in this product. The Committee would request that considering the importance of R & D and the product, the dominance of the said company deserves to be condoned and should be condoned in the public interest.

(16) The Committee would like to compliment the Secretariat for Industrial Approvals (SIA) for bringing about a considerable improvement in the expeditious disposal of industrial licence applications. The Committee feels, however, that the system of industrial licensing has, in fact, ceased to be a system; it has become a web of perennial entanglements. It has therefore come as no great surprise to the Committee that as many as 28% of the original industrial licence applications have had to be returned to the prospective entrepreneurs because of their failure to understand the complexities of this web. The Committee, therefore, recommends that the 'Entrepreneurial Assistance Unit', which currently functions only in Delhi, should now have its counterparts under the auspices of SIA in the principal cities of India.

(17) Another major finding of the Committee has been that considerable delays occur in the case of several industrial licence applications covering major industrial projects, due to the lack of concrete policies having been evolved by Government. Hence, such licences continue to remain in the domain of uncertainty and ambiguity as Government itself is not clear about the various aspects related to the growth of such major industries. The Committee, therefore, strongly recommends that at least in the case of the major 25 to 30 industries, even at the expense of spending time in the initial stages in preparing the ground rules and the guidelines for such industries, such an exercise must be made so that at the time of the industrial licence applications, all the parties connected with this industry are aware of these ground rules and guidelines. Every hour spent in getting a clear picture of what the Government would want a particular industry to achieve (and how) will reduce the delay of several weeks (if not months) through the expeditious disposal of the industrial licences, and, therefore, the Committee recommends that every major industry must be supplied the necessary "policy inputs".

(18) The Committee strongly recommends that in the preparation of such basic 'Policy Inputs' for major industries, the Development Councils must be intimately associated with the drawing-up of the major industry plans.

19) The Committee also recommends as a general principle of industrial licensing that the policies in existence at the time when an entrepreneur applies for a licence, should normally be policies that should govern the conditions of such a licence application, and the induction of totally new factors must be kept to the barest minimum.

20) The Committee agrees with the Ramakrishna Study Group that the time has now come to reactivate the Development Councils. The Committee feels, however, that the role of the Development Councils is so central to the effective functioning and growth of an industry, that it should not be merely an official body. The Committee, therefore, has indicated at great length, the composition of the newly activated Development Councils and the manner in which it can play an effective role.

21) The Committee would like to make it clear that the activities it contemplates for the newly activated Development Councils would not in any way conflict with those of the Working Groups appointed by the Planning Commission.

22) The Committee strongly believes that the principle of automatic growth must be accepted for a variety of economically compelling reasons. The Committee, therefore, recommends that an automatic annual growth of 5 per cent compound rate, or 30 per cent for a 5-year period in the registered/licensed capacity should be permitted to all the industries including dominant undertakings without any conditions attached.

23) The Committee must express its apprehensions in respect of the thesis, now sought to be advanced in certain quarters, that industrial Licensing, particularly in so far as it pertains to MRTP companies, should permit "vertical" expansion", but discourage and, indeed, forbid "horizontal proliferation". The Committee, on the basis of several economic grounds, strongly feels that "horizontal proliferation" by companies, irrespective of whether they are MRTP companies or not, is, in fact, a powerful instrument for the diffusion of economic power and far from being forbidden, should, in fact, be encouraged if the goals of promoting competition and reducing the market share of the large companies are to be achieved.

(24) The Committee is also perturbed about the time-consuming and indeed economically injurious effects of the proposed Urban Land Ceiling Act, and has, therefore, made specific recommendations as to how, without in any way subtracting from the goals set for this Act, it can be made flexible enough to accommodate the requirements of industrial growth and mobility.

(25) The Committee feels that though it has no mandate to make any recommendations in the areas of the small-scale sector it would only plead that the principle of continuously reassessing the 'cut-off points' be also applied to this sector, so that success in growth is not converted into a penalty for the small scale sector. The Committee has rejected outright the thesis that 'once small is always small'.

(26) The Committee recognises that the subject of import of foreign technology is a complex one which defies easy solution. Nevertheless, the Committee does feel that, once the demarcations have been made of the areas in which technology can and should be promoted, all impediments in terms of time and the rates of royalties and technological fees should be removed or reduced. In developing this argument, the Committee would also invite the possibilities opened up by the new system of "Buy-back Arrangements", which are emerging in international trade and investment. The Committee would also like the country, within permissible limits, to avail itself of the opportunities of importing second-hand machinery, which due to various reasons, are now cheaply and easily available. The Committee recognises that there are dangers in this area. But this can be no excuse for missing out opportunities provided by the current world economic situation, for India to import such second-hand machinery will help to bring down the cost of capital equipment, which have escalated by several times during the last 8 years.

(27) The Committee has made a number of observations regarding the causes of delay in the current system of industrial licensing. It cannot, however, accept the plea that the SIA should be dismantled and that each administrative ministry should, hence-forth, be entrusted with the task of industrial licensing. The Committee, however, does believe that some degree of decentralisation is both inevitable and desirable in the shape of setting up

Screening Committees within each administrative Ministry so that the prospective entrepreneur making an industrial licence application is made aware at the earliest of what, in the judgement of the different governmental ministries/agencies, are the weaknesses or deficiencies in his proposals. The Committee, therefore, strongly recommends setting up of such Screening Committees in the manner suggested in its report. The Committee recommends that after the Licensing Committee meeting, the decision reached should be communicated to the applicant within 30 days.

(28) The Committee notes that in certain cases, inspite of the existence of the Licensing-cum-MRTP Committee, an applicant has once again to await a whole chain of clearances. This duplication needs to be avoided. The Committee recommends that once a Letter of Intent has been issued, no new conditions should be set by any agency either associated with the relevant Licensing Committee, or for that matter by any other agency except the financial institutions.

(29) The Committee fails to understand why in several areas pertaining to an industrial project, one and the same aspect comes within the scrutiny of different governmental agencies. Such 'commonalities' in the areas of technology, of finance, of monopoly legislation, etc. should not exist. If the different governmental agencies must be consulted, they must arrive at a common set of conclusions and conditions to be imposed in a concurrent and not sequential manner. In this connection, interconnected help would be secured in the case of major industries by implementing our recommendation of having major industry plans worked out in advance.

(30) While the Committee is convinced that only projects with a value of assets of over Rs 15 crores must, henceforth, go to the licensing committee, it is equally convinced that even so the SIA needs to be strengthened in terms of both its staff and its powers. The Committee, however, cannot accept a viewpoint placed before it that the SIA should be endowed with executive powers. The SIA must remain a servicing organisation, but must be made a strong and effective servicing organisation. The Committee has, therefore, suggested ways and means of implementing this recommendation.

(31) The Committee hopes that its appeal for securing "a deadline project" is not used for the negative purpose of quick disposals but for the positive purpose of early acceptance. The Committee greatly appreciates the painstaking work of the Sachar Committee but fears that its recommendations in several areas will add substantial delays in securing the early fructification of industrial investments and industrial projects. Indeed, the Committee is convinced that the entire task it has been entrusted with, namely of expediting the decisions under the present system of industrial licensing and monopoly legislation will be rendered null and void if the recommendations of the Sachar Committee in this respect are accepted. A number of recommendations of the Sachar Committee will retard whatever little liberalisation the Indian Industry has secured during the last few years, and its insistence on "compulsory reference to the MRTP Commission" is only one of the several objectionable recommendations made by the Sachar Committee. Our Committee has, therefore, dealt with at great length on the irrationality of such recommendations.

(32) The Committee suggests that a Licences Reviewing Committee be set up so as to serve as a sustaining mechanism ensuring continuous interactions between Government and industry in the vital areas pertaining to the early fructification of an industrial project.

(33) The Committee recognises the extremely useful work undertaken by the DGTD but believes that it will not be capable of living upto the deadlines set for it so long as its present staff remains what it is and so long as its relationship with the Development Commissioner of Small Scale Industries is not properly defined.

(34) The Committee has made specific recommendations in a large number of areas covering industrial licensing, import of goods, import of foreign technology, etc., and these recommendations are spelt out at considerable length in its chapter on 'Specific Proposals to Expedite Industrial Licensing'.

(35) In the scheme suggested by the Committee, only such projects which have a far-reaching qualitative and quantitative significance in the Indian economy, would be put up for clearance from the angles of both, Industrial Licensing and Monopoly Legislation. The Committee, therefore, feels that it may be deemed more expeditious that one centralised body should deal with the issues raised by such major projects instead of the present three Licensing Committees whose composition is more or less identical.

(36) The Committee views with apprehension, the suggested amendment to the Monopolies & Restrictive Trade Practices (Classification of Goods) Rules 1971. In the opinion of the Committee, the principles by which this amendment is sought to be made are so open to challenge on both logical and statistical grounds, that such an amendment should not be effected unless a more careful examination is made. As the Committee has laid great stress on the creation of Development Councils for each major industry, it feels that the task of classifying products should be entrusted to such Development Councils. The Committee, however, does not reject the idea that a reclassification of products and goods has to be made every 5 to 7 years on the same principle which it has advocated before, namely that the dynamics of the economy creates new products and new technology, which must be taken care of through reclassification of goods.

(37) The Committee feels that there is some justification in the continuous complaint made before it regarding the delays in fructification of an industrial project caused by what has been called the 'detailed scrutiny' by the public sector financial institutions. The Committee, however, cannot accept the suggestion that the grant of an industrial licence must automatically carry with it the right of an assured supply of finance. The Committee would also not like the financial institutions to be associated with the licensing authorities right from the outset. However, the financial institutions should be given representation on the Development Councils set up for each major industry.

(38) The Committee strongly feels that the principle of convertibility is not only a major impediment to industrial investment but also the cause of considerable delays, involving as it does, a great deal of negotiations. If the objective of the convertibility

clause is not a political one, it would not be difficult to institute devices, whereby, the growing prosperity of a concern, initially assisted by the financial institutions, can be shared in an increasing manner by such institutions.

(39) The Committee would recommend considerable caution about the manner in which the linking of Letter of Intent with the financial institutions has been recommended by the Narasimhan and Ramakrishna Study Groups. Apart from the fact that clarity is lacking in this area, the practical difficulties of linking financial assistance with the system of industrial licensing are immense.

(40) The Committee would like to take this opportunity of stating that one of its central recommendations of using fiscal and financial incentives as a means of taming the regulatory impact of industrial licensing can be achieved through the instrument of the financial institutions. The Committee would, therefore, assign a special liberalising influence to this role instead of having the present system of "banned areas". The guidelines given to the financial institutions could provide for positive incentives to new entrepreneurs, as part of the overall industrial policy to strengthen the weak instead of the current system of weakening the strong.

(41) The Committee believes that a novel approach can be tried out with the system of the industrial licensing. The present system has been associated with a negative code of vetoes and prohibitions. But there are distinct possibilities of using the industrial licensing system as a means of rewarding entrepreneurs who achieve certain socio-economic goals. Thus, in the vital areas of promoting Research and Development, of exports, of anti-pollution schemes and, last but not the least, of "ancillarization," rewards could be given to industries in terms of automatic expansion of the capacity of existing projects or by way of easy entry into new projects where socio-economic goals would be successfully served and achieved by such entrepreneurs. The very system of industrial licensing which today hinders economic growth, can, indeed, be used as a powerful instrument for promoting industrial growth provided certain socio-economic objectives are achieved.

42) The Committee recommends that in any major industry if ıe figures of production show a stagnancy for a period of more ıan 3 years, the system of industrial licensing must be made so perative as to immediately bring into existence new additional apacities. In other words, a monitoring mechanism must be stablished within the present system of industrial licensing not nly to continually update the 'cut-off points' but also to give ıe early warning signals of stagnancy in investment and production ı major industries.

43) The Committee recommends that, henceforth, while the Ministry of Industry will continue to be the co-ordinating Ministry or all the economic ministries involved in securing the desired ates of growth in industrial production, (for which incidentally the Ministry of Industry is currently held responsible), it is necessary t the inauguration of every financial year that each Economic Ministry, under which specific industries are entrusted, must leclare to the nation its targets of growth. If such a target is oo ambitious, it will be found out to be hollow; if it is too modest, t will hardly reflect well on the Economic Ministry concerned. In vorking out such targets, proclaiming them and then seeking to ıchieve them, the different economic Ministries will come to acquire ı vested interest in chasing-up the industrial licence applications ınd in expediting their early fructification. Hence in our scheme, vhile the SIA will remain as an important arm of the Ministry of ndustry to pursue the deadlines set for the early sanctioning of he Letter of Intent and, subsequently, the industrial licence, it will also give incentive to the economic Ministries to actively engage themselves in trying to ensure that the licences, which come within its purview, are granted at the earliest so that the targets of growth and investment for the specific industries, which come within its purview, are achieved.

(44) The Committee is firmly of the view that the Ministry of Industry has a vital role to play in the promotion of industrial development within the country. The Committee desires that the Ministry of Industry must become a powerful engine of industrial development in a manner ideally set by the example of MITI in Japan. The Committee, therefore, would suggest that the Ministry

of Industry carefully studies the operation of MITI in Japan and adopt suitable and desirable features for Indian industry. The Committee would like to think that the Ministry of Industry should come to be looked upon by the various segments of Indian industry, not so much as a regulative body, but as a positive instrument of industrial growth, harmonising the conflicts between the different segments of Indian industry and establishing incentives to achieve higher production along socio-economic goals of the country. We are sure that this is the role the Ministry already sees for itself, and we can only hope that our recommendations will help the Ministry to achieve its goal of being a powerful promotional agency of India's industrial development.

*** ***

CHAPTER I

INDUSTRIAL LICENSING AS AN INSTRUMENT OF INDIA'S INDUSTRIAL GROWTH - AN EVALUATION -

(A Historical Background)

.1 On the 15th of August, 1947, after nearly two hundred years of colonial rule, India began her "tryst with destiny". Along with her freedom, India inherited almost all the major characteristics of a largely under-developed economy.

* Between 1900 and 1947, her per capita income in real terms stagnated at a paltry Rs.40 per annum:

* more than three-fourths of her population lived below any minimum acceptable poverty line:

* basic infra-structural facilities required for industrialisation were inadequate; and

* industrialisation with the rare exception of the jute, cotton, sugar and (to some extent) steel industries was yet to touch the hemlines of society.

.2 It was natural in this inheritance of stagnancy and poverty that, India, as part of her "tryst with destiny", was called upon to hail her Five-Year Plans as "the new horoscopes of modern India" and to look upon the major works of irrigation and industry as "the new temples of a modern society". (the phrases used in brackets were all coined by Pandit Jawabarlal Nehru). Significantly, India began her march towards not merely rapid but balanced economic development; the year in which she launched her First Five-Year Plan, namely 1951, was the very year in which she enacted the Industries (Development & Regulation) Act. (the IDR Act).

3 That, much has been achieved on the industrial front cannot be denied; in the range of the new products now manufactured within the country, in the wealth of the technical and scientific talent now built up, and in the nearly four-fold increase in industrial production secured since 1951 lie indices of India's industrial achievements. But that, much more could have been achieved is also unchallengeable. One major factor lies in the lack of rapidity and flexibility of response, which has been rendered inevitable by a large, perhaps unparalleled, network of controls. Investment in new activities or in substantial expansion has become virtually synonymous with investment in delays, in uncertainties, in frustration.

4 It cannot be otherwise, if, one only recalls that any large company seeking to make a major investment is exposed to innumerable types of controls arising from the IDR Act, the Essential Commodities Act, the MRTP Act, FERA etc. Indeed, it is difficult not to find a correlation between the "explosion of controls" during the decade of 1966-67 1973-77 and the marked slowing down in the rate of growth in annual industrial production and in annual real capital-formation during this same decade.

5 Before analysing the extent to which licensing policy was responsible for industrialisation not living upto its earlier promises, it would be worthwhile to give a brief resume of some of the major policy measures enacted by the Government in order to evaluate their efficacy in achieving the desired industrial development goals.

AICC Economic Programme Committee

6 The first attempt at working out overall policy guidelines for the development was made by the Economic Programming Committee of the All India Congress Committee in 1947 under the Chairmanship of the then Prime Minister Jawaharlal Nehru. In the field of industry, a number of important policy proposals

were made including the demarcation of industries for development through the decentralised sector and those which were to be developed on a large scale, and the possibilities of integrated development of the two.

IPR 1948

7 The Government of India then called an Industries Conference to consider future policy for industrial development and on the basis of deliberations at the Conference, the Government formulated and announced its own Industrial Policy Resolution in April 1948.

8 The main features of this resolution were that it envisaged progressive and active role for the state in the development of the industry. The private enterprise was to play an important role with proper direction and regulation. A list of basic and priority industries was announced to indicate the fields where planning and regulation was to be the responsibility of the Central Government. It also emphasised encouragement to Cottage & Small Scale Industries in co-ordination with large scale industry. The Resolution also stressed the need for a dynamic national policy to ensure continuous increase in production by all possible means, side by side with measures to secure equitable distribution.

IDR Act 1951

9 To implement the IPR 1948, the Industries (Development & Regulation) Act was enacted in 1951. The object of the Act was to declare certain industries of All-India importance and to provide machinery for their development and regulation. The Act aims at regulation of industries through licensing mechanism and administrative supervision.

IPR 1956

1.10 After the IDR Act 1951 came into force in 1952, the Government decided to review the IPR 1948 in the light of significant changes and developments such as :

(i) The adoption of the Constitution of India which came into force in 1950;

(ii) Formulation of five year Plans which laid down priorities and concrete programmes with targets of Industrial Development in the country with the necessary direction; and

(iii) Acceptance by the Parliament of the Socialistic pattern of Society as the objective of social and economic policy.

1.11 As a consequence on April 30, 1956, the Government of India adopted the new Industrial Policy Resolution which replaced the IPR 1948. The objective was to accelerate the economic growth and the speeding up of industrialisation. It emphasised the development of heavy industry, machine building industry, expansion of public sector and the growth of corporate sector. The resolution for the first time made clear distinction between the private sector and the public sector in the mixed economy.

It classified industries into three categories:

(a) The first category includes 17 industries, future development of which would be the exclusive responsibility of the State.

(b) The second category includes 12 industries for the development of which private enterprise is expected to supplement the efforts of the State which is expected to take the initiative in their development.

(c) The third category comprises of all other industries not specified in Schedule 'A' & 'B'. Their future development is left to the private sector. The State is free to start any industry either on its own or render necessary help to private enterprise to run an industry.

IPR 1956 thus laid greater emphasis on the public sector which resulted in giving dominant role to the public sector units.

Legislative Measures

.12 To give effect to the implementation of the IPR 1956, and the policy laid down in the Five Year Plans, the Government introduced various legislations to regulate different and important industries and the private enterprise. They include IDR Act, the Capital Issues Control, Import and Export Controls, Foreign Exchange Regulation, the Essential Commodities Act, the Tariff Commission Act, the Companies Act 1956 etc.

Swaminathan Committee

.13 After the enactment of the IDR Act, for nearly 12 years there was no systematic attempt to review the working of the Act and many procedural delays occurred; e.g. the rules at that time prescribed that an application for industrial licence must be disposed of within 3 months but very few applications could be disposed of within 3 months.

.14 The Swaminathan Committee was appointed in 1963 to review procedure and suggest modifications. The most important recommendation of the Committee was for issue of the letter of intent prior to issue of an

Industrial Licence. The idea behind the issue of letter of intent was that the applicant should know as early as possible, whether the Government would be prepared to consider favourably the applicant's proposal. The letter of intent should, therefore, indicate broadly the conditions subject to which the Government would be prepared to consider grant of licence.

1.15 Following the recommendation of the Swaminathan Committee, the Government introduced from February 1964, the procedure for issue of the letter of intent. It specified the time limit within which certain steps have to be taken. If this is not done, the letter of intent automatically lapses, unless the applicant requests for an extension of time limit and the request is favourably considered.

1.16 The Swaminathan Committee had confined itself to procedures and allied matters. There was no attempt to evaluate the role and purpose of industrial licensing in an environment which changed considerably as a number of objectives were loaded on to the licensing policy such as regulation of industrial development and canalising of resources according to plan priorities and targets; prevention of monopoly and concentration of economic power (CEP); protection of small scale industries; encouragement to new and medium entrepreneurs; dispersal of industries etc.

The Hazari Committee

1.17 The Planning Commission, therefore, appointed Hazari Committee in 1966 to study the working of the licensing system during the Second and Third Five Year Plans. The Committee pointed out certain defects in the licensing system, such as the following:

(i) that the licence did not automatically provide for a package of clearances required but was only first of the many hurdles;

(ii) influential groups secured more licences and kept them without implementation for foreclosure of licensed capacity;

(iii) the process of consideration and reconsideration of applications at various levels and at various times involved delays and higher costs etc;

(iv) no follow-up action was taken for monitoring the project implementation and

(v) The large and medium sized business groups enjoyed a higher ratio of approval in licensing applications as compared to others and that in respect of certain houses share in the investment applied for and approved had tended to rise over the period.

Prof. Hazari's important recommendations were the following:

(i) There should not be complete embargo on the expansion and diversification of large industrial houses if the projects are techno-economically feasible and where other entrepreneurs are not coming up.

(ii) The Government should be reasonably clear in its mind at the outset regarding the industries in which competition can and should be fostered and others in which, on account of technological and economic compulsions there is no alternative to some degree of monopoly.

In the latter group of cases, it is obviously better to tolerate monopoly - though not monopolistic abuses - than to pursue ad hoc anti-monopoly licensing practices which encourage uneconomically small plants.

(iii) Credit planning to be used for guidance of investment and to make planning more effective.

(iv) The licensing policy must lay emphasis on entrepreneurial homework.

Industrial Licensing Policy Inquiry Committee

1.18 Following the discussion on the Hazari Committee Report, the Government appointed the Industrial Licensing Policy Inquiry Committee popularly known as the Dutt Committee on 22.7.1967 to go into the basic questions regarding the functioning of the licensing system and any advantages obtained through it by some of the Larger Industrial Houses.

The Committee submitted its report in July 1969. Its main conclusions are -

(i) The licensing system as it actually worked could not ensure the development of industries mainly according to Plan Priorities.

(ii) Licensing failed to prevent the growth of capacity in less essential industries and it could not be expected directly to ensure the creation of capacity in the more essential ones.

(iii) Even within the limits of the licensing system, the attempt to ensure the attainment of its specific objectives was half-hearted.

(iv) The follow-up of licences was unsystematic and licences remained unimplemented for long periods.

(v) The licensing system was not properly organised for the purposes which it was expected to achieve; the authorities concerned were not clear about these objectives and no clear guidelines for their attainment were laid down. The result has been that the licensing system has not contributed adequately to the attainment of the socio-economic objectives of the IPR 1956 and the Plans.

(vi) The use of industrial licensing as a positive instrument should be confined to industries which come within the basic, strategic and critical sectors for which detailed industry plans should be prepared.

(vii) Licensing as it operated during the last ten years has not been effective except in a very limited way for the attainment of the objective of regional dispersal.

Licensing Policy 1970

19 On the basis of the recommendations of the Dutt Committee Report, the Government modified its licensing policy in February 1970 and rigorous restrictions were imposed on the issue of licences to the large industrial houses specified in the report. A list of core industries consisting of basic, critical and strategic industries was drawn up. The larger industrial houses and foreign companies were expected mainly to contribute to the development of industries in this sector. The exemption limit for licensing was raised from Rs 25 lakhs to Rs 1 crore subject to certain conditions. However, the exemption was not available to the larger industrial houses and dominant undertakings.

MRTP Act 1969

1.20 At this stage the MRTP Act 1969 came into effect from June 1970 onwards and it contained a novel chapter on the Concentration of Economic Power. The restrictive provisions of the Act were made applicable to the companies, having assets either on its own or with interconnected undertakings of Rs 20 crores or more and dominant undertakings with the assets either on its own or with interconnected undertakings of Rs 1 crore and 1/3 of the market share.

F E R A

1.21 The Foreign Exchange Regulation Act 1947 was replaced by the comprehensive Act of 1973. The new Act provides greater power to the Government for regulating the non-resident investment in Indian companies, controlling remittances etc.

Licensing Policy February 1973

1.22 The implementation of the 1970 licensing policy coupled with rigorous enforcement of the provisions of the MRTP Act was so rigid due to obsession with the concept of large houses that there was virtual industrial stagnation. In the context of experience gained in the implementation of the Industrial Policy of 1970 and in the background of the approach to the Fifth Five Year Plan, the Government announced the revised industrial policy in February 1973.

The main feature of this policy was to give up the Dutt Committee definition of the larger houses and to adopt the limit of Rs 20 crores mentioned in the MRTP Act. A consolidated list of core industries was drawn up and included in the Appendix I to the Policy Statement. The larger houses and foreign companies were

allowed to participate in these industries except in the items reserved for the small scale sector, public sector etc. In other industries, they had to undertake substantial export obligation.

Stagnation

.23 These policies in fact heralded an era of restrictions and checks because the ghost of "Monopoly Houses" dominated the scene and the licensing policy was made increasingly rigid for larger houses and foreign companies with a view to avoiding further concentration of economic power and also to encourage the growth of small and medium entrepreneurs. While the objective of promoting small and medium entrepreneurs is laudable, it is not perhaps realised that the growth of these entrepreneurs can only be gradual. Further, the fact that the growth of the large and the small is interdependent was ignored. The policy of drastically curbing the growth of companies forming part of larger houses and foreign controlled companies deprived the private sector of investment and growth potentiality. Ideological considerations became more predominant than economic considerations which were either deliberately ignored or side-tracked. The Dutt Committee pointed out certain irregularities of a few large houses but exonerated the majority of them from any blame. Yet this important aspect was ignored, and the blame and hostility were extended to all for the misdeeds of a few. Added to these were the licensing procedural delays of years for clearances in a number of cases. The result was disastrous as could be seen from the fact that the growth rate of industrial production was hardly on an average 3 per cent during 1970-71 to 1974-75. In short, the imposition of ideological decisions on the economic plan contributed in a large measure to this stagnation. The country thus came to suffer from all-round acute scarcities.

Trend of Liberalisations

1.24 Realising the need for liberalisation, rationalisation and streamlining of the licensing system, the Government brought out a very important procedural change by setting up the Secretariat for Industrial Approvals (SIA) in November 1973. The SIA has to dispose of the applications for industrial licence, foreign collaboration, capital goods etc. within a prescribed time schedule to reduce the delays. Its working has been examined in detail subsequently.

1.25 Many liberalisations were introduced subsequently in the licensing policy from time to time such as -

(1) Freedom of diversification within the same group of items of a scheduled industry.

(2) Maximum utilisation of the plant and machinery.

(3) Recognition of additional capacities as a result of replacement and modernisation of equipment.

(4) Automatic growth of capacity allowed to selected engineering units.

(5) Delicensing of certain industries.

(6) Excess production over licensed capacity for fuller utilisation of installed capacity.

The beneficial effects of these liberalisations could be considered from the fact that the industrial production started picking up.

Industrial Policy Statement, December 1977

1.26 The Janata Government's Industrial Policy Statement (IPS) was announced on 23.12.77 which contains specific and elaborate provisions regarding Government policies on small scale industries, khadi & village industries, large houses, public sector, balanced regional development, pricing policy, take-over, etc. The distinctive featuresof the IPS are the shift in emphasis from the large scale industries to the small scale and cottage industries, the marathon list of reservation of 807 items to the small scale sector and a shift from urban to rural areas.

Ramakrishna Committee

1.27 The Government appointed the Ramakrishna Committee to review the working of the IDR Act and to look into the changes necessary and to identify bottlenecks and for simplifying regulations and procedures relating to the licensing system. The Committee submitted its report in February 1978 and in the light of the Committee's recommendations, the Government further liberalised the licensing system.

(i) The exemption limit of licensing was raised from Rs 1 crore to Rs 3 crores.

(ii) The existing stipulation regarding the overall limit of investment of Rs 5 crores was deleted.

(iii) Government would pursue the State Governments for reduction in the multifarious approvals which the small and tiny industries are required to obtain at the State level.

(iv) The Development Councils set up under the IDR Act will be reactivated provided no additional financial burden is involved.

(v) Instead of 12 channels for clearances of application of capital goods imports (CG), there will be only three tier arrangements.

An Economy of Shortages

1.28 The stop-go type of industrial development which has arisen from the regulatory effect of licensing, has resulted in prolonged periods of marginal shortages in several essential commodities and services in our country. Licensed capacities are worked out to meet projected demands with greater attention to the negative need for avoiding overlicensing rather than the reality of shortages due to unimplemented licences, inefficient units, industrial relations problems, paucity of essential inputs like electricity, coal, transportation, etc. The resultant shortages persuade Government off and on to attempt liberalisation, but the weight of regulations has become progressively so heavy that liberalisations themselves are becoming slower to take effect as illustrated currently in the case of cement industry. The system has gradually lost its agility to respond to fluctuations in demand and supply as the emphasis has shifted more and more towards regulation rather than development. This is perhaps the most serious limitation of the existing system as it is against the interests of the consumer in the short term and detrimental to the whole developmental process in the longer term.

Maximum of Regulation : Minimum of Development

1.29 A review of the implementation of the policy clearly reveals that the regulatory aspect is over-stressed while the developmental aspect has become subservient. This has also been highlighted by the Ramakrishna Committee.

While the Committee appreciates the effort of Government in accelerating industrial development through

various doses of liberalisation administered from time to time, it would like to emphasise that very often what has been conceded in principle has been defeated in the details of implementation. The main object of increasing industrial production on a sustained basis has, therefore, been over-shadowed by the ad-hoc nature of such measures as it left many gaps in the policies.

.30 In view of this serious distortion in the whole gamut of policies, the Committee strongly feels that a total review of these policies is imperative. What follows in the subsequent chapters is the Committee's endeavour to suggest policy measures to help rapid industrial development.

*** ***

CHAPTER II

BASIC REASONS BEHIND THE PRIMACY OF REGULATION OVER DEVELOPMENT

2.1 The system of industrial licensing, despite its intermittent flashes of liberalisation, has, on balance, become a major impediment to the rapid growth of industrialisation in the country. It has created an entire network of vested interests in the fields of industry, of technology, of the bureaucracy, and indeed within government as a whole. It has been a principal cause of the "high-cost economy" which the Prime Minister recently so rightly denounced, as the substantive delays it enforces brings about a major escalation in the costs of capital equipment of the projects sought to be cleared. It has denied to Indian industry the flexibility which could enable it not only to cash in on opportunities in world trade but also to respond with an investment-boom in such areas within the economy where demand has tended persistantly to outstrip supply.

2.2 Thus, between 1963 and 1973, world demand for exports of cotton and blended cloth, and fabrics thereof, increased by nearly $3\frac{1}{2}$ times. More than 60 per cent of this demand was for products of a fresh mill-made cloth. Several economies of the world cashed in, in a big way, on this demand-upsurge; the Indian textile industry could secure only a small part of this boom because, amongst other reasons, the licensed capacity of the mill-made cotton cloth industry was virtually frozen. Likewise, within India, innumerable have been the cases where even in major industries, shortages have persisted for long years; yet the system of industrial licensing has remained unresponsive to the imperative need of creating additional capacities through additional investments.

.3 Having said this, the Committee is of course aware that industrial licensing alone cannot be made to share the entire responsibility for the relatively poor performance during the decade from 1966-67 to 1976-77 of industrial production and industrial investments (in real terms). The state of the economy, the type of policy-pronouncements made by the leaders of the country, the supply-demand situation within each industry, the levels of taxation, the severity of price-controls directly or informally administered, the state of industrial relations - all these, and more, are amongst the several factors that make or mar the decision to invest. Even if there was no system of industrial licensing at all, it would not automatically follow that there would be a great investment-boom; too many other factors are involved. Yet it remains true, in the context of the Indian economy, that the liberalisation of the system of industrial licensing is necessary, though not a sufficient condition, for an industrial upsurge within the country.

.4 Analytically, though inter-relatedly, there are three major elements in our present system of industrial licensing:

(a) there is, first and foremost, the intellectual theories that supply a ballast and a justification to the policies sought to be framed in this area;

(b) there are, secondly, the actual policies that are evolved; and

(c) thirdly, and obviously, there are the procedures evolved to administer the policies.

.5 In subsequent chapters, we shall deal with the areas of policy and systems of procedures; in this chapter, we

seek to ask ourselves what are the intellectual or "socio-economic" goals under the compulsion of which, the system of industrial licensing has defied all attempts at its simplification and liberalisation.

Multiplicity of objectives

2.6 Easily the biggest single factor that tends to make industrial licensing more and more complex and restrictive, almost every year, is the ever-lengthening list of "socio-economic objectives" that it is called upon to achieve simultaneously.

2.7 The Industrial Policy Resolution 1956 itself contained as many as 13 objectives :

(i) to accelerate the rate of economic growth;

(ii) to speed up industrialisation;

(iii) to develop heavy and machine building industry;

(iv) to expand the public sector;

(v) to build up a larger co-operative sector;

(vi) to provide increasing opportunities for gainful employment;

(vii) to improve living standards of the masses;

(viii) to reduce disparities in income;

(ix) to prevent monopolies and concentration of economic power;

(x) to ensure that the decentralised sector acquires sufficient vitality to be self-supporting;

(xi) to reduce the disparities in the development of different regions;

(xii) to progressively associate workers and technicians in management; and

(xiii) to decentralise authority and management.

.8 Such a multiplicity of objectives/criteria for industrial licensing not only led to conflicts but, more alarmingly an atmosphere of ambiguity which gave tremendous discretionary power in the hands of Government personnel implementing licensing policy. The subjective elements associated with such power - a direct consequence of multiple licensing criteria - has led to all sorts of distortions in the field of industrial development. Many projects, essential from the economic point of view, are rejected on strictly non-economic grounds.

.9 This Committee recognises that economic development is an inherently dynamic process calling for new strategies and the adoption of new objectives. At the same time, the Committee feels that the routine manner in which the Industrial Licensing Policy is used as a multi-purpose mechanism for achieving a vast variety of conflicting objectives, constitutes an inevitable source of ever increasing delays. Thus in the initial stages, the primary function of industrial licensing as an instrument of planning was to conserve resources for the priority sectors of the economy. This was the positive function to ensure that funds in a capital-scarce country are not diverted to what would be deemed to be the non-priority sector. In short, licensing was used as an efficient allocative device for apportioning scarce resources among competing priority sectors. Subsequently, the foreign exchange crisis that engulfed the country in the mid 1950's made industrial licensing also cover import licensing, latterly leading to its use for imposing export obligations on the applicants;

Subsequently came the goal of regional diversification; next came the goal of encouraging the maximum number of new entrants in any given industry; then came a whole series of objectives related to the containment of what was conceived to be the "concentration of economic power". As if these were not enough, the promotion of indigenous science and technology came as another factor in the picture, and more recently the abatement of pollution has been added as another objective. Indeed, one could go on almost indefinitely with the list of objectives which the Industrial Licensing Policy is simultaneously called upon to deal with. As mentioned in the previous chapter, the developmental objectives of industrial licensing have given way to mechanistic, time consuming, dilatory procedures which have served to decelerate economic growth and have proved to be a disincentive to fresh investments.

2.10 The Committee recognises that different objectives/ criteria were framed at different points of time in response to different exogenous situations. For instance, during the era of acute foreign exchange scarcity, import restrictions and export promotion were desirable controls. With changes in the economic parameters, certain previous objectives cease to have any relevance, giving way to newer goals and strategies. Most countries "rotate" their goals accepting new objectives while, at the same time, removing or down-scaling past goals. But in India, our goals multiply with time. Objectives framed with reference to a situation existing at a previous point of time are rarely ever down-scaled; at the same time newer objectives are loaded on to industrial policy. Each new objective alarmingly brings newer legislation, newer policies, newer departments each inevitably claiming the right to use the industrial licensing mechanism to secure its goals. We need to emphasise that the industrial structure of a modern economy cannot be viewed in discrete parts but as a continuum in terms of size, with organic interdependences and linkages. To rely on an administration too heavily to achieve these goals simultaneously would

not only blunt its impact, but lead to a bureaucratic proliferation resulting in the strangulation of entrepreneurial spirit in trial.

11 There has been no serious debate conducted in India as to whether alternative policy instruments, specially fiscal-cum-financial devices, could be used to replace licensing. Still less has there been discussion conducted on rotating goals and objectives in response to changing situations. The only area where perhaps some de-emphasis has taken place in India has been in the field of foreign exchange controls. This exception only goes to prove the fundamental validity of the thesis : so long as industrial licensing is called upon as the single mechanism for simultaneously attaining the never ending list of objectives, delays are bound to arise.

12 Business efficiency and consequently its rate of growth can be enhanced if firms can operate knowing that they have complied with present Government regulations and are working within the framework of an unambiguous clear cut Government policy. In situations where business has to operate under ambiguities and uncertainties arising out of multiple criteria, it is the consumer who ultimately suffers as he is burdened with the increased costs - an inevitable outcome of delays in implementation of projects.

Regulatory impact of Post-IDR Act ignored

13 Again, since the enactment of the IDR Act in 1951, there has come into existence a vast plethora of regulatory legislation and institutions, which by law and logic should have diminished the "regulatory" features of the IDR Act but which in effect, through precept and practice a la the Laws of Parkinson, have reinforced and accentuated such regulatory provisions of the IDR Act (and its Rules & Regulations).

2.14 The Companies Act of 1956, with its subsequent Amendments, now lays claim to being among the most voluminous legislation in the world; the Monopolies & Restrictive Trade Practices Act, 1969 (MRTP Act) has made itself "unique" in the history of anti-monopoly legislation by its Chapter III, wherein "the value of assets" has been equated with "concentration of economic power" and size has been made a sin; and the Foreign Exchange Regulation Act of 1973 (FERA) has imposed a whole array of controls on non-resident investment in Indian companies. If to these grey areas of central legislation is to be added the nationalisation of finance effected through a galaxy of nationalised banks, the public sector financial institutions, and the State Financial Corporations each imposing their own chain of conditions on every major project, then one is not surprised to find that the fear was continuously expressed before the Committee that any reduction in the time period, that we would secure through our recommendations on the industrial licensing front, would be at best marginal in terms of the total series of clearances that have to be obtained for the fructification of the project.

2.15 With rare perception, the Ramakrishna Committee observed in its Report (para 1.16) that "the many faceted regulatory role originally intended (for the IDA Act) has been substantially altered and in many cases rendered superfluous." The time has come "to place in perspective the various major directions of Industrial Policy and the numerous instruments of control and promotion now available in the industrial field." (para 1.18)

2.16 The system of industrial licensing, as currently in operation, has thus the worst of both the worlds : on the one side, it is used, often routinely as a multi-purpose mechanism for the simultaneous achievement of a never-ending list of national socio-economic goals, and on the other side, the regulatory features of the post-IDR legislations and institutions have far from relieving only

reinforced its own regulatory nature. But a third reinforcing factor has to be reckoned with; to it, we now turn.

Box theory of licensing

17 Ever since industrial licensing was introduced in India, its principal thrust has been to divide Indian industry into a series of mutually exclusive independent boxes. This rather advanced theory of "boxification of the Indian Economy" has resulted in excessive reservation for the public and the small scale sector and has completely neglected the role of complementarities in the process of economic growth. Proponents of the Box Theory feel that such compartmentalisation helps the entry of new entrepreneurs in different fields, and protects the small units from the larger ones.

18 The Committee regrets that it cannot share this view because the experience of several developing countries shows that the growth of one sector of the economy is seldom at the cost of the other sectors. At a macro-level the different sectors are not substitutes of one another; they are in fact complementary to each other. The healthy growth of the large scale sector can, and will induce corresponding growth in the public and the small scale sector and vice versa. It will not, as believed by the Box theorists, hamper the all round development of the small sector.

19 Furthermore, the Box theorists do not believe in techno-economic Darwinism. Economic growth is a dynamic process which, by virtue of its dynamism makes obsolecence inevitable and even desirable. New products and technologies always replace the old; clinging on to old, uneconomic methods, purely in the interests of reservation and boxification will, in the final run, be detrimental to economic development.

2.20 Experiences of nearly all advanced countries show the fallacy of the Box theory of industry. In Japan, Taiwan, South Korea, the growth of the large scale sector has, in fact, been a very powerful propellant for the small and medium scale sectors. The dynamics and complementarities of economic growth are evident in even the more advanced States of India where rapid rate of growth of the large scale industry has brought about, in its wake, a large number of small-scale entrepreneurs. This is particularly true in the States of Maharashtra and Gujarat.

2.21 No doubt, there are certain compulsions for a fuller employment policy which would necessarily dictate that certain industries adopt labour-intensive technologies, wherever economically feasible. Equally, there is no doubt that efforts have to be made, through appropriate mechanism of incentives to ensure that the gains of large scale growth are spread out to the small and medium sectors. But this does not necessarily require "boxing" industrial production into various forbidden lists. Instead, appropriate fiscal and monetary policies are required. Indeed, as suggested in a separate Chapter, apart from encouraging the small and/or the new entrepreneurs with a number of incentives, the system of industrial licensing can itself be used to reward those industrial units, which deliberately go in for maximum "ancillarisation" In this way, the liberal, if not automatic growth in licensed capacity permitted to the large or medium units will itself promote, often more than proportionately, the growth of the ancillary units.

Rejection of "Once Small, Always Small" Policy

2.22 As part of the Committee's thesis that changes in attitudes and approaches of all the segments of Indian Industry (the private sector inclusive) are fundamental to the expeditious system of industrial licensing and to the rapid growth of industrial production, the Committee,

while rejecting the "basic hostility" argument about large/ medium/ small-scale industries, also rejects the "once small, always small" thesis. Growth in one's area of specialisation gives both morale and momentum to an entrepreneurial concern. The Committee understands Government's intention to expand continuously the list of industries "reserved" for the small-scale sector, but surely it cannot be its intention, not clarified as of now, that once a small entrepreneur has been successful, his "growth" must be frozen at a particular limit, as, once he crosses the limit of Rs. 10 lakhs, he is subjected to licensing regulations which act as a disincentive to his growth. The entire philosophy of "freezing" growth at certain cut-off points of each segment of Indian industry, other than that of the public sector, is unacceptable to the Committee. If this philosophy, however, must prevail, then mechanisms must be planted into the licensing system for continuously increasing these "cut-off points" and for extending the list of industries to which entry is made possible or substantial expansion made easier. This recommendation is made not only to meet the inroads of inflation but to record and permit rapid growth.

Needed - An Industrial Culture

13 Last but not the least, industrial growth requires an industrial culture, not an administrative apparatus. The attitude that suited the colonial administration have been carried over consciously or unconsciously in our administrative system. For example, delay in administrative matters was convenient to the colonial rule as it helped them in preservation of the 'status quo'. This attitude persists to some degree even today and administrative delays are usually taken for granted little realising that these delays cost the exchequer and the country considerably. We continue to believe that improvement can be made by supervision of one tier over another instead of self-motivated initiative, dedication and delegation. The Committee, therefore, opines that the human factor is very important and a change in the attitude and outlook is an important pre-requisite for increasing administrative effectiveness. The delays could be considerably reduced

if not eliminated by a qualitative change in the administration and making it achievement-oriented rather than procedure or correspondence-oriented. While clear policy guidelines and streamlined procedures in administration would greatly help in expediting administrative approvals, very often the experience is that even these do not solve the problem of delays. The fundamental reason for the same is the prevailing bureaucratic culture and the process of accountability in Government. We are aware that this is a much wider issue and requires detailed expert consideration to formulate concrete proposals for its re-orientation. However, the fact remains that, at present, as far as it relates to industrial development and the process of approvals it often acts as powerful brakes.

For an entrepreneur, time is of the greatest importance in the implementation of the project. His rewards and punishment are directly linked to the time factor. On the other hand, for the administrator, time factor enters only as a subsidiary criterion in his evaluation thus slowing the process in accelerating the tempo of industrialisation in the country. A change, therefore, is required to make the internal system of the administration responsive to the developmental tasks and the process of industrialisation.

2.24 But for this change to be effected, it is imperative that an atmosphere be created in which the "bona fides" of the Government official concerned are not perennially under doubt. "Buck-passing" and "committee-formation" with their inevitable delays must ensue when a Government official cannot muster the courage of taking a decision unilaterally. Industrial growth cannot be trapped in a web of an administrative apparatus in which there are perils for positive action but no penalties for inaction.

Conclusions

2.25 (i)Whatever recommendations the Committee will make at a later stage either at the policy or the procedural level will have no meaningful impact unless certain basic changes in mental and emotional approaches

are effected.

(ii) The aspiration to secure not in rotation but simultaneously all the national socio-economic goals is debatable; the aim of using the system of industrial licensing as a multi-purpose weapon to secure simultaneously all these goals is even more debatable. The system at best works with a lot of delays; at worst, does not work at all.

(iii) Consideration must, therefore, be given to using more vigorously a whole chain of fiscal and financial incentives to achieve certain socio-economic goals rather than the restrictions imposed through the present system of industrial licensing.

(iv) Consideration must be given as to how the innumerable regulatory mechanisms and legislations that have come after the IDR Act of 1951 can relieve the regulatory nature of this Act instead of, as currently, reinforcing it.

(v) The "box" theory of industrial licensing signifies a static, not a dynamic, approach to industrial growth. Save in exceptional conditions, the surest way to throttle the rapid growth of the small-scale sector is to impose embargo on the growth of the medium and the large-scale sector.

(vi) While a rapid rate of industrial growth is the surest way to ensure that all sectors grow simultaneously at a fast speed, specific incentives can be given to small and or new entrepreneurs to promote and diffuse entrepreneurship. Indeed, large industrial units should be permitted substantive and almost automatic expansion in their licensed capacity if they provide proof of achieving increasing "ancillarisation".

(vii) The Committee does not believe that growth-with-equity requires the "freezing" of each segment of Indian industry at certain "cut-off points", but if this has to be so, these "cut-off points" need to be continuously updated not only to meet the obvious erosion in their real values by the process of inflation but genuinely to record and permit increased growth.

(viii) Industrial Licensing requires an industrial culture, not an administrative apparatus. Initiative, dedication and delegation must be its characteristics. No amount of skill shown in establishing "deadlines" will help in actual practice unless a sense of urgency and an atmosphere of trust are created; if anything, in their absence, expeditious clearance may well become "expeditious denial".

CHAPTER III

RE-DEFINING THE "CUT-OFF POINTS"

1 In line with one of the central recommendations of Chapter II, we now seek in three central areas to re-define the "cut-off points" in a manner which

(a) will considerably reduce the work-load of the Licensing Authorities;

(b) will take into account the erosion caused by inflation in the real values of the figures currently mentioned; and

(c) will spur economic growth without jeopardising the goal of creating new entrepreneurship.

2 These three areas refer

(a) to the point at which reference should be made to the Licensing Committee;

(b) to the point at which reference should be made to the Licensing-cum-MRTP Committee; and

(c) to the definition of "dominant undertaking" and to the proportion that shall be deemed to constitute 'dominance'.

Delicensing the Core Sector:

Before dealing with these points, it is necessary to record that various bodies that have appeared before this Committee had argued in favour of delicensing of the core sector industries. After several rounds of discussions, the Committee has come to the conclusion that these arguments have a very strong compelling

economic force.

3.4 Before suggesting delicensing, the Committee wishes to underline the reasons for making such a recommendation. Firstly, almost axiomatically, the core sector industries - as defined by the Industrial Policy Statement of 1977 and Appendix I of Industrial Policy 1973 - are those in which demand, as a rule, tends to outstrip supply. Secondly, because of the strategic importance of this sector and because of the chronic excess demand and shortage situation, there should be no fear of over investment in these critical areas. Thirdly, there can be no bar on non-MRTP companies from entering these core sector industries. On the contrary non-MRTP companies should find delicensing totally acceptable. In all probability most of the entrants in these (generally) capital intensive sophisticated areas would be MRTP companies with adequate technical know-how. But the Committee would argue that new non-MRTP entrants be given incentives in the form of lower interest rates, high debt-equity ratios, lower promoters contribution etc. in order to encourage the growth of nascent entrepreneurship in these fields. In short there should not be any fear that delicensing will penalise non-MRTP entrants.

3.5 The Committee is, therefore, driven to the conclusion that, just as areas below Rs. 3 crores do not require industrial licence, so also, with adequate intelligent industry-wise planning there is, in fact, no need for industrial licensing in the core sector as defined above.

3.6 If, however, the above arguments in favour of core sector delicensing do not find favour with Government, then till such time Government accepts this principle, the Committee would like to recommend that the present exemption limit of licensing of Rs. 3 crores should be raised to Rs. 15 crores.

3.7 The Ramakrishna Committee considered such a proposal and felt that it had several attractive features but refrained from suggesting on the grounds that:

(a) "it may defeat the purpose of regional dispersal of industry" and

(b) "total abolition of licences may create problems of planning infrastructure".

.8 Regarding (a) it may be mentioned that in the last 20 years industrial licensing has done precious little for the dispersal of industries. The Government must realise that the licensing policy measures and dictates alone cannot bring about regional dispersal. Locational choices depend on several strong economic factors such as availability of transport, the exact nature of the products, the location of the markets, availability of labour services, input flow including power and raw materials etc. If all these factors are not present in any region/area, then no amount of Governmental coercion via industrial licensing can introduce regional dispersal.

.9 Regarding (b) it may be mentioned that the basic infrastructure for industrialisation has been, to a large extent, created over the last 25 years. Where additional infra structural facilities are required, and where the private sector refuses to invest, the public sector can fill in the gap. The Committee would, therefore, recommend that entrepreneurs should be allowed to take their own initiative and risk, instead of making them totally dependent on Government.

Size should not be the criterion

10 Presently licensing liberalisations are not applicable to MRTP companies. The MRTP Act came into effect

from June 1970 based on the report of the Monopolies Inquiry Commission of 1965. Chapter III of the Act contained provisions pertaining to concentration of economic power in terms of assets and market dominance. It is, however, significant to note that the asset criterion of Rs. 20 crores was not suggested by the Monopolies Inquiry Commission, as it did not regard assets per se injurious to the national interest. The asset criterion thus, was a subsequent addition at the time of finalising of the MRTP Bill.

3.11 In the opinion of the Committee, with the passage of time, the set of factors responsible for such a definition has lost its meaning and has become quite irrelevant. For instance, due to inflation, both domestic and international, and the consequent high cost of capital goods, the value of the Rupee has been eroded. Today even a medium scale cement plant requires investment in the region of Rs. 30 to Rs. 35 crores. To consider such a company to have concentration of economic power merely because of the size of its assets makes very little economic sense.

3.12 The Committee, therefore, recommends that size should not be the criterion for licensing purposes. The MRTP company should not be defined by size, i.e. by value of assets of Rs. 20 crores and above, but by dominance, i.e. having a market share of 1/3rd or more. The latter, in the Committee's opinion, would be a far more rational index of concentration of economic power.

3.13 To round up, the Committee thus recommends that the present exemption limit be raised from Rs. 3 crores to Rs. 15 crores subject to the following conditions:

(i) The item is not reserved exclusively for the small scale sector.

(ii) The item is not reserved exclusively for the public sector.

(iii) The undertaking is not a dominant one - dominance being defined in terms of 1/3rd of the market share.

.14 An objection could arise from the contention that such "de-licensing" of all industries below Rs.15 crores would make planning extremely difficult, insofar as the claims of these industries to the use of power, transport facilities, rupee resources, foreign exchange etc. would be substantial, and would have to be "reconciled" to the likely availability of such resources as targetted in the Plan. We see much validity in this argument but would invite attention to the following points:

(a) Even at present, the fact that a project is "licensed", does not carry any guarantee that the infra-structural facilities, or for that matter, the rupee resources, will be "assured" to the project.

(b) Perhaps, for the first time since the last 22 years, the country is uniquely endowed with two features that make rapid industrial development possible. Firstly, we do not to-day suffer from a shortage of investible resources; we suffer from a shortage of viable projects. The rate of savings for the third year in succession threatens to be higher than the rate of investment. The latter must be speeded up. Secondly, we simultaneously do not suffer from a shortage of foreign exchange.

(c) Our suggestion for de-licensing upto Rs.15 crores must be seen against our subsequent recommendation that there must be a "plan" for each major industry worked out by the Administrative Ministry concerned in conjunction with the Ministry of Industry, the Planning Commission

and the Development Council for the industry concerned.

3.15 The Committee, therefore, recommends that the opportunities for expanding rapidly our industrial growth through increased liberalisation of industrial and import licensing now afforded to us by our relatively high rate of savings and by our comfortable foreign exchange position should not be lost.

"Cut-Off Point" For MRTP Companies:

3.16 The Committee recommends, barring the limitations noted in Para 3.13, that while for the purpose of industrial licensing Rs.15 crores should be the "cut-off point", for the purposes of the MRTP, the "cut-off" point should be Rs.45 crores on the basis of the following reasons. The value of assets for the purpose of industrial licensing as well as MRTP Act should be calculated as suggested by the Committee in para 3.20 that is net fixed assets plus investment (if any) + net current assets.

3.17 The Committee is of the opinion that till such time Government accept the principle that size should not be the criterion for the purpose of the MRTP Act, an upward revision of the Rs.20 crores limit for MRTP companies is highly necessary to take into account global inflation, high cost of capital goods, modern technological changes, etc. The Government's policy of restricting MRTP companies to core sector and Appendix I projects implies that it wants these units to go into capital intensive industries. The setting up of highly capital intensive projects automatically raises the value of the assets of these companies without the so called concentration of economic power. In this context the various bodies who have appeared before the Committee have unanimously pleaded for raising the limit of Rs.20 crores to a much higher level.

3.18 In this connection the Committee would like to take into account the rationale adopted by the Ramakrishna Study Group. In raising the exemption limit from Rs.1 crore to Rs.3 crores, the Study Group considered the following points:

(i) The limit of Rs.1 crore was introduced in February 1970.

(ii) The inflationary impact on investments that has occurred over the last few years has greatly diminished the real value of exemption.

(iii) The inflationary impact on investments that has occurred over the last few years has greatly diminished the real value of Rs.1 crore.

(iv) An investment of about Rs. 1 crore in 1970 would in monetary terms cost well above Rs. 2 crores today.

(v) Similar erosion in value would occur in the coming years and that there should be stability in Government policy.

3.19 The Committee feels that these economic reasons are equally valid and applicable with respect to the Rs.20 crores limit. The MRTP Act came into effect in 1970. The limit of Rs.20 crores, however, was stipulated in 1967 when the MRTP Bill was introduced in the Parliament. In the meanwhile, inflation, higher capital costs and the need for newer technology have made the figure of Rs.20 crores quite meaningless and devoid of economic reality. The Committee is of the opinion that there should be a weighted average indexing of capital goods with 1967 as the base year, and the current price index be used to define the new, higher limit. This is a reasonable recommendation for it takes into account the inflationary trends of the previous 10 years. Roughly speaking, the new post indexed value would be in the range of Rs.45 crores.

3.20 The Committee also wishes to state that while calculating assets under the MRTP Act, the total current liability is at present taken into account. This is not economically justifiable. It is possible to argue that for limited purpose such as for computing the value of assets of companies involved in a merger or amalgamation, 'current liabilities' may or may not be included in such assets. But in the unique Indian situation, where the 'value of assets' is sought to be equated with 'concentration of economic power', then the assets over which a company has no command whatsoever cannot by any stretch of imagination be included in computing its 'value of assets'. A rational definition of the 'value of assets' will thus include three elements:

(1) net fixed assets;

(2) investments (if any); and

(3) net current assets.

3.21 Definition of Dominant Undertaking:

It should be recognised that in our current definition of a "Dominant Undertaking", the market, as defined, leaves many things to be desired. If we are to bring the criteria of economics to bear on this subject, then surely the market must refer to the availability of the products as classified in the MRTP classification of goods. In such a case, the correct definition of "Market" must refer to the sale of a particular industrial product in a given year plus the imports minus the exports. This, then, constitutes the total availability within which the "dominance" has to be correctly judged. For, imports do compete with the Indian manufactured products; and exports don't so compete. Indeed, one valuable benefit from the Govt.'s point of view of increased exports by an MRTP company is itself a fact that to the extent the exports are increased a larger area is protected for the new non-MRTP entrepreneurs.

3.22 The Central Statistical Organisation (CSO) publishes statistics of output in value terms for the factory sector of the country. In brief, the statistics cover what is known as the 'Census Sector' comprising large and small scale units and of the remaining sector known as the 'Sample Sector'. The sample sector covers factories employing between 10 and 49 workers with the aid of power and between 20 and 99 workers without the aid of power, which correspond to the definition of a "factory" set out in Section 2(m) of the Factories Act, 1948. In other words, the CSO statistics in respect of the factory sector include factories in the sample sector which may employ between 10 and 49 workers when power is being used and between 20 and 99 workers when power is not used. The production of such sample sector factories is not, in accordance with the proviso to Section 2(d) of the M.R.T.P. Act, to be taken into account for the purpose of determining whether an undertaking is dominant or not.

3.23 It has been found that the production of the sample sector which is to day so excluded by the above mentioned proviso would, in terms of value, amount on an average approximately to 20% of the total factory sector.

3.24 The 20% figure mentioned above would vary and at times fluctuate widely with the commodity produced by an undertaking. To take an example, the figures published by the CSO for the factory sector for the year 1969 contain at S.No.208 the statistics relating to the manufacture of cocoa, chocolate and sugar confectionery. This classification of goods corresponds to the existing classification used in Major Group 20-21; Food Products Group 209. It will be seen that the value of the total output of the census sector and the sample sector together was Rs.558 lakhs, of which the census sector's share was Rs.298 lakhs and the sample sector's share was as large as Rs.260 lakhs, that is to say, the percentage of the sample sector's production was as much as 46.6% of the value of the total production in 1969.

3.25 It is, therefore, only logical that the production in the sample sector should also be taken into account while establishing dominance, if need be, with the necessary amendments in the MRTP Act.

3.26 If a company with multi product manufacturing is dominant in respect of one product, then it should be considered dominant only in respect of that particular product and not in all other products.

Similarly, if a company with its elaborate R&D work, brings out a new product into a market, such a company is considered dominant in this product. The Committee feels that considering the importance of R&D and the product, the dominance of the said company deserves to be condoned and should be condoned in the public interest.

3.27 Indeed, it was stated during the deliberations of the Committee that the definition of a dominant undertaking does grave violence to the dynamic working of the economy, insofar as the figures taken into consideration are not those of the installed capacity but of the actual production. Inefficient units which fail to utilise their installed capacity or units which have pre-empted capacity and on their not utilising this capacity fully, come to enjoy an indirect benefit insofar as what is taken into account for the purpose of calculating the dominance in a given market is not their actual installed capacity but their own production. The efficient unit which does utilise fully the installed capacity or the unit which has not indulged in the practice of pre-empting capacity on the other hand comes to be penalised. This is obvious from the fact that the grand total to be arrived at for calculating the total market will not include the installed capacities of the different units in a given industry, but will include only the actual production. The unit which, therefore, utilises fully its installed capacity runs the risk of being defined as "dominant" whereas the units which fail to do so are not so classified.

28 Although the Committee appreciates the logic of the above argument, it would reiterate its suggestions to revise the definition of "Dominant Undertaking" on the lines mentioned in paras 3.21 to 3.26. Simultaneously, the value of assets should also be increased from Rs. 1 crore to Rs. 3 crores so that a dominant undertaking would now be defined as holding one-third of the market share and with value of assets of Rs. 3 crores (as defined above).

Criterion for Dominance:

29 The Committee may further point out that the definition of 'dominant undertaking' suggested by the Sachar Committee for the purpose of determining dominance, is to reduce the existing criterion of 1/3rd of market share to 1/4. Presently, for this purpose, the lowest production in any one year out of three calendar years immediately preceding the preceding calendar year in which the question of dominance arose, is considered. The Sachar Committee has suggested that this should be changed to average of the three years, instead of the lowest.

30 Our Committee has carefully considered this suggestion of the Sachar Panel, and found its argument for the proposed change unconvincing. This may, perhaps, be appropriate for countries like the USA, UK, etc., where 20-25 percent would be much more in quantum compared to the same percentage of Indian production. Further, the demand for goods is so vast in our country that ever-increasing production is the need of the hour. In countries like the USA, UK, etc., availability of entrepreneurial talent is not a problem. But in India, this paucity is conspicuous which results in existence of dominant undertakings. No doubt, it would be reduced by the entry of fresh entrepreneurs, but it would necessarily be a gradual process. The thinking, therefore, that large number of entreprenеurs are waiting in a queue to enter the field is illusory and deceptive as the examples of Cement and paper industry would amply prove. These industries were closed to large houses

but because of the acute shortages which developed, large houses are now allowed to apply for fresh capacity.

3.31 The Sachar Committee wants to discard the 'lowest' criterion on the ground that the low production in any particular year may be due to lock-outs, strikes, power shortages etc. and hence would prefer average of 3 years. The Committee endorses this suggestion.

3.32 The Committee, therefore, after taking into consideration all the relevant factors, feels that the present provision of the 1/3rd market share should be left undisturbed.

Conclusions:

(a) With the qualifications listed by us in Paras 3.13 and 3.14 (c), industrial licensing should be exempt for all units for projects with value of assets up to Rs.15 crores. In other words, only projects above Rs.15 crores should require industrial licence.

(b) For reasons explained in Paras 3.16 to 3.19, the limit of Rs.20 crores for MRTP companies should be raised to Rs.45 crores for MRTP companies. In other words, only if the assets of a company exceed Rs.45 crores will they be covered by the MRTP Act 1969.

(c) "Value of assets" in both the above cases shall be as defined in Para 3.20, that is Gross Fixed Assets minus Depreciations plus Investment, if any, plus Net Current Assets.

(d) The definition of "the market" for assessing dominance must include imports and goods

manufactured in the sample-sector but must exclude exports.

(e) In "the market" so defined, the share for the purpose of calculating "dominance" shall be one-third.

(f) A dominant undertaking would, henceforth, be defined as an undertaking with more than one-third of the market share and with value of assets of Rs. 3 crores or more (as defined above).

*** ***

CHAPTER IV

INDUSTRIAL LICENSING POLICY

(General Observations And Specific Recommendations)

In this chapter, the Committee proposes to make a number of general observations with a view to making specific recommendations in the field of Industrial Policy.

Role of the SIA

4.1 The Committee greatly appreciates the fact that after coming into existence of the SIA, the rate of disposal of the applications for industrial licences has considerably improved. It has been successful in clearing a huge back-log of nearly 4,000 applications pending at its inception in November 1973. For instance, according to the report of the Ministry of Industry for 1976-77, nearly 31 per cent of the applications were disposed of in 90 days and 93 per cent within 180 days

4.2 These figures, of course, do not necessarily reveal the true significance of the working of the SIA. It may well be that the major capital-intensive projects may be among those which take considerably longer than 180 days, and, therefore, eventhough it may account for only 7 per cent of the total licence applications not dealt within 180 days, in terms of the tota. investment to be brought into fruition, the proportion represented by the 7 per cent of the licence applications no: dealt with within 180 days, may well be considerable.

4.3 In any case, the signficant fact is that even the period of 90 days which is the allotted period for the disposal of industrial licences, the SIA was able to dispose of only 31 per cent of the licence applications. It is only during a period of 180 days that the great majority of

licence applications, namely 93 per cent, were disposed of. This clearly shows that in spite of the admirable work done by the SIA, the overwhelming majority of the licence applications, nearly 60 per cent, have been dealt with only during the period between 90 days and 180 days.

Entrepreneurial Assistance Unit to be established in Principal Cities

.4 It has been found that as many as 28 per cent of the licence applications made by prospective entrepreneurs were returned as defective or incomplete and were sent back for rectification and resubmission. The defects generally included - use of wrong forms, inadequate number of copies, incorrect or incomplete filling in of columns, absence of treasury receipts, short payments, etc.

.5 This may well mean that a few licence applicants may be deliberately withholding certain vital information to be furnished in the relevant licensing forms. But it is very likely that the great majority of licence applicants are genuinely unaware of the innumerable complexities of the industrial licensing system as it has come to be evolved at present. The Committee members can themselves testify that during their deliberations over a period of 10 weeks, they were surprised to find that the magnitude of complexities was even greater than what they had expected.

.6 While large business firms can at least afford to make a massive investment in terms of time and effort in coping with this labyrinthine web, a great many of the medium sized entrepreneurs would certainly be thoroughly discouraged and demoralised in coping with this web in continuous entanglements.

4.7 It is, therefore, recommended that an 'Entrepreneurial Assistance Unit' on the lines already existing in Delhi, be set up under the supervision of the SIA in atleast three other principal cities of the country, namely Bombay, Calcutta and Madras, in order to disseminate information and guide the prospective entrepreneurs in this complex area in the best and cheapest manner possible.

Basic Policy Inputs for Major Industries

4.8 Another major cause of delay, which is particularly agonising for the capital-intensive and technologically sophisticated industries, lies in the lack of a policy framework for the major industries coming within the compass of the various administrative ministries. Again and again it has been found that on several critical issues relating to the expansion and diversification of an industry, both the basic information at the techno-economic level and the principal policy structure that the government would like to impart to such major industries is lacking.

4.9 Hence, in order to facilitate a quick and yet meaningful response from the different administrative Ministries concerned, our Committee would advise that in respect of at least the first 25 or 30 major industries in the country, there should be an integrated inter-Ministerial policy in respect of each of these major industries. We need hardly elaborate the various facets that must inevitably be considered as part of possible policy inputs that must precede and not succeed the application for an industrial licence. The disadvantages of such a policy are of course obvious. Perhaps, a number of months may well elapse before a co-ordinated policy emerges in respect of each major industry. But once a coherent policy emerges, this disadvantage would pale into insignificance considering the advantages of such industry-wise planning.

4.10 Once a policy pronouncement is issued by such an Inter-Ministerial Committee in collaboration with Planning Commission, all parties concerned - the prospective applicant, Government, quasi-Government institutions etc. will be informed in clear cut terms as to what conditions must be observed before applying and/or before sanctioning a proposed licence. This will save considerable time in project implementation and reduce inordinate delays that presently occur in the absence of such a basic policy input guidelines. In making this recommendation, we are fortified by a number of factors to which attention needs to be drawn:

(i) A number of complaints have been received by us that one of the greatest stumbling blocks in the effective operation of the SIA is the fact that a particular administrative Ministry has yet to formulate clearly the policies in respect of specific industries or for the products for which a licence application is made. At least in respect of certain major industries, our scheme of preparing an Inter-Ministerial blueprint will clear the decks and will remove uncertainty regarding the correct nature of the policies intended to be pursued by the Government.

(ii) We are also fortified in making a suggestion for an industry-wise study by the emergence of the concept of the Rolling Plan, as one of the primary objects of the rolling plan will be monitoring the state of the industry from year to year. We believe that this concept of the rolling plan, together with activisation of the Development Councils, will prove to be powerful policy inputs for the benefit of the Ministry incharge of the major industries concerned. It is implicitly assumed by us that in preparing a broad policy plan and in preparing an Inter-Ministerial blue print for each major industry, not only will the relevant Ministries be consulted but also the Planning

Commission and the Development Council concerned.

(iii) In mentioning the Inter-Ministerial blue-print for each major industry, we take it as obvious that the "Infrastructure Ministeries" will be more closely involved in estimating the requirements of power, transport (either wagons and/or road transport), coal, etc. Likewise we take it as equally obvious that the financial institutions will also be involved in drafting of the financial criteria to be established for these major industries such as the differential rates of interest, debt equity ratios and other financial aspects like promoters' contribution etc. that would be taken into consideration in the promotion of the industry.

Policy Existing at the Time of Industrial Application to Prevail

4.11 One of the benefits that we envisage as flowing from our above recommendation is that the complaints regarding the continuous changes in governmental policy will now have to be explained to the prospective licence applicants. The Committee was apprised of certain cases where even after the Letter of Intent was issued to the prospective licence applicants, a change was effected in governmental policy, and the applicants were informed that the projects for which they had secured Letters of Intent would now be within the purview of the public sector.

4.12 The Committee would like to state that it has no prejudice whatsoever against the growth of the public sector industry. But it must be made clear that, once an overall industry plan has been made, there should not be scope for such ambiguities which put the entrepreneur to great hardships and to a considerable disappointment.

4.13 The Committee, therefore, recommends, as a general principle of industrial licensing, that the policies in existence at the time when an entrepreneur applies for a licence, should normally be the policies that should govern the merits of his case. The induction of totally new factors in the picture cannot, of course, be ruled out, but as far as possible, such changes should be fewer in number and certainly not involve shifts in policies so substantive as to negate the efforts of the prospective applicants to build up specific industries.

Development Councils

4.14 The Committee whole-heartedly agrees with the Ramakrishna Study Group (RSG) that the time has now come to reactivate the Development Councils. The Committee also agrees with its recommendation that there should be a reorientation, both in the objectives and in the composition of the Development Councils. The Committee, however, cannot agree with the recommendation regarding the composition of the proposed reactivated Development Councils.

4.15 We believe that the new composition of the Development Councils as envisaged by the RSG will make it an official body which, in actual practice, will find it extremely difficult to deviate from the previously laid down Government policies. This will not be because of any lack of capability on the part of the senior Government officials to exercise their own judgement but simply because certain predetermined policies may in reality be very difficult to be challenged or changed by a Development Council so predominantly manned by senior Government officials with heavy bias in favour of existing policies. The failure to invite new trends of opinion and policy innovativeness will seriously interfere with the effective quality of the contribution that such Development Councils are expected to make in restructuring the major industries of the country.

4.16 We therefore strongly argue that the bias of such a Development Council should be non-official even if it is to be chaired by the Secretary of the Ministry concerned, and this we accept only on the ground that there might be chances of a quicker acceptance of recommendations by the Development Councils if a person of his standing is the Chairman. It follows therefore, that the Vice-Chairman should be a non-official. The important fact should remain that the Development Councils' primary task must be to serve as a body for conceptualising the future growth of a particular industry. The fact that we are so emphatically stressing the non-official character of such a Development Council must not mean that we advocate its dominance by the representatives of the existing units within a given industry. One of the great defects of the working of the Development Councils in the past has been its tendency to be consciously or unconsciously dominated by the representatives of the existing units within each industry. In our scheme, we visualise that at least three persons would be men of eminence and distinction in the fields of economics, commerce, etc. and not necessarily connected with the industry. We also visualise in this Development Council represented by 14 persons (as also recommended by the RSG) that at least one representative of the consumers must be present. Our bias is, therefore, not necessarily in favour of any particular representative of industry, be they in the private or public sector. Our aim is to make the Development Council an effective instrument for the conceptualisation and promotion of a major industry.

4.17 In every major industry, be it steel or shipping, be it fertilisers or cement, the representatives of the public sector enterprises will also be present in the Development Councils, together with the representatives of the private sector. Hence, our recommendations in respect of the Development Councils to be reactivated would be as follows :

(a) The Development Council should not have more than 14 members on its Council.

(b) Even if the Secretary of a Ministry is the Chairman of such a Council, not more than 5 members of the Development Council concerned should be official representatives and not more than 7 where the industry in question is one in which the public sector enterprises have a major role.

.18 The Committee visualises a paramount role for the Development Councils as a forum for Government-industry interaction and joint consultations. If properly constituted and activised, they would perform a very useful function of monitoring and accelerating industrial growth. The Development Councils could be entrusted with the very important task, in consonance with the Planning Commission of charting out the role of every major industry in India. There are several aspects to be examined in this connection; the nature of the financial structures to be permitted in a particular industry; the extent to which and the manner in which new entrepreneurs can be encouraged, the locational aspects; the supply-demand position in the industry; the reclassification of industries for determining dominance; the reservation of items for small scale sector; the import of capital goods and raw materials; role of fiscal and monetary policies in relation to such an industry and so on. They would also be eminently suited for identifying technology gaps.

19 Such a policy formulation recommended by the Development Council to the specific administrative Ministry could become a very viable instrument of assisting the Ministry concerned with guidelines for the development of such an industry. We have argued at length that considerable delay has occurred in the actual securing of licences because in several key areas, the official policy is either

lacking, ambiguous, or is in the nature of a piecemeal collection of adhoc recommendations. Once a certain degree of clarity is obtained regarding the future growth of a major industry, and such a clarity by definition cannot exclude subsequent changes as and when thought desirable, it will become relatively easier for the SIA and for the economic Ministry concerned to deal with a licence application more expeditiously than is done at present. Such a reorientation of the goals and the composition of the Development Councils will help them to play not only a major role in expediting the Industrial Licensing Procedures and to save time, but to serve as an effective instrument in the promotion of the industrial growth in the country.

Working Groups

4.20 The Committee is aware that, presently, some Working Groups have been appointed to formulate industry-wise macro plans for the consideration of the Planning Commission in finalising the Five Year Plans. The functions of the Development Councils as envisaged by us will not overlap those of the Working Groups because the former will undertake micro-level industry planning to ensure and monitor the growth of each industry. On the contrary, the macro-level projections of the Working Groups could be fruitfully dovetailed with the micro-level industry-wise planning by the Development Councils. Their time-spans may differ, and while the Working Groups will be concerned with perspective planning, the Development Councils will have to formulate concrete policy measures to achieve the Plan targets, and in so doing also act as a monitoring mechanism.

Automatic Growth

4.21 A natural growth in production for an enterprise is one of the surest means of containing internally escalating costs, preventing stagnation, updating technologies, etc.

The Government has partially recognised this fact and permitted such growth in 15 engineering industries, albeit, under certain conditions.

22 The Notification dated 5.9.75 allows automatic growth of 5 per cent per annum or 25 per cent in a Five Year Plan period, of the registered or licensed capacity of the industrial undertakings in one or more stages. It is applicable to 15 engineering industries subject to fulfilment of certain conditions. This growth is considered necessary to prevent stagnation, to keep pace with the trends in technology, to generate internal resources for modernisation and rehabilitation and also to partially absorb escalations in the cost of raw materials, wages, etc.

23 The Committee considers that a moderate expansion of capacity and output is vital to the maintenance of the health of an industrial undertaking as it enables it in addition to the factors mentioned above, to upgrade technology, absorb new technology, adopt product-mix to suit consumer preferences and to stand international competition. Further, the problem of sickness in industry has become very acute. There are about 289 large and medium sick units involving total bank credit of Rs 858.45 crores engulfing a wide spectrum of industries. In view of the alarming proportion of sickness, there is a dire need to take urgent steps for its prevention and cure. The automatic growth would provide one such solution.

24 The Committee suggests that this principle should be extended to other industries without conditions attached. The Committee feels that the conditions presently in force are onerous and the rigidity with which they are implemented has nullified the very purpose of the automatic growth. The policy thus, though good in principle, does not achieve the desired success at the implementation level because of existence of these conditions.

4.25 The Committee, therefore, without hesitation recommends that an annual automatic growth of 5 per cent compound rate or 30 per cent in the registered/licensed capacity for a five year period should be permitted to all the industries including dominant undertakings without any conditions attached. This would help prevention of sickness and avoid scarcities.

'Horizontal Proliferation'
A Closer View :

4.26 As the Committee has been permitted to offer its observations not only on industrial procedures, but also on industrial policies, it would take this opportunity to seek clarification on an issue which is currently being debated. It is sought to be argued in certain quarters that Industrial Licensing, particularly insofar as it pertains to the MRTP companies, should permit 'vertical expansion', but discourage, and indeed forbid, 'horizontal proliferation'.

4.27 The logic behind this reasoning appears to be that 'horizontal proliferation' by the MRTP companies stands in the way of the entry of new entrepreneurs in several fields. Thus, if a company is specialised in the manufacture of a product, it should not be permitted to use its managerial and marketing talent to enter another unrelated industry.

4.28 The Committee would again stress that it shares with the Government of India the aspiration to create as many new entrepreneurs as possible as part of an overall plan to diffuse 'concentration of economic power'. Indeed, for this purpose, the Committee reiterates its plea that a reasonable use of fiscal and financial incentives be made available to new entrepreneurs in a particular industry, 'new entrepreneurs' for this purpose being defined as those who do not belong to the group of MRTP companies.

29 The Committee feels however, that 'horizontal proliferation' by companies, irrespective of whether they are MRTP companies or not, is in fact a powerful instrument for the diffusion of economic power, particularly when such a power gives a company the scope to manipulate prices, to prevent the entry of new comers, etc. Such 'market dominance' is in fact the real threat that arises from 'the concentration of economic power'.

30 If this be so, 'horizontal proliferation' far from being discouraged should in fact be positively encouraged, except where special conditions argue otherwise. Thanks to 'horizontal proliferation', so-called Large Industrial House (LIH) may have substantial assets, but in the field of specific commodities, its 'market dominance' may be insignificant, and even negligible. One can immediately cite the case of a so-called LIH, whose value of assets are deemed to be over Rs.1,000 crores, but its share in the market of cotton and blended textiles in the mill-made sector alone is less than three per cent. Likewise, its share in the market for radio receivers is less than six per cent. Indeed, relatively small concerns are not only able to give considerable competition to the units belonging to the so-called LIH, but in fact, in certain areas are able to put up even a better performance. By contrast, 'vertical expansion' could only mean a greater degree of 'market dominance'. 'Horizontal proliferation' would thus enable even the relatively small and medium-sized companies to compete vigorously with the units belonging to the so-called LIH. Numerous cases can be cited to support this proposition.

31 On the other hand, where a particular project requires considerable capital, a great deal of managerial and marketing talents, and involves a long gestation period, one of the best ways to break the market power of a large entrenched enterprise is to permit other large enterprises to enter this difficult field. The parties

that can effectively compete with the long-established companies belonging to the LIHs in such capital-or-technology-intensive areas will seldom be the small or the new entrepreneurs. They will normally, but not necessarily, be the units belonging to the other LIHs. 'Horizontal proliferation' which encourages or compels units belonging to the so-called LIHs to diversify into such capital-intensive areas thus becomes an instrument of promoting competition and diffusing the 'concentration of economic power' One could easily cite a number of cases from recent history itself to prove the validity of this point.

4.32 Not least, where it is the firm intention of the Government to compel the large units to 'vacate' their existing areas of activity, 'horizontal proliferation' once again become a useful mechanism to expedite this process. While the small and the new entrepreneurs are encouraged to move into the 'vacated areas', the established large companies are encouraged to move out into the more capital-intensive industries.

4.33 The Committee, therefore, feels that considerable confusion prevails in this particular area of economic discussion, and that the contention sometimes sought to be made that 'horizontal proliferation' should be prevented, is, in fact, a self-defeating proposition. 'Horizontal proliferation' is in fact one of the best instruments for diffusing concentration of economic power.

Miscellaneous Policy Issues

The Urban Land Ceiling Act

4.34 Considerable difficulties are experienced by the entrepreneurs due to rigid implementation of the Urban Land Ceiling Act. For instance, the Financial Institutions refuse to accept any land as mortgage till it is

cleared under the Urban Land Ceiling Act, causing immense hardships to an entrepreneur. The Committee feels that Government should take a broader view in such cases and grant exemption to an industrial unit under the Urban Land Ceiling Act, if the latter gives an affidavit not to sell its land. Exceptions could, however, be made if the units are to be transferred to rural and backward areas by selling the Urban Land at the prevailing market price.

35 Instances have been brought to the notice of the Committee that in metropolitan areas even an addition of a single machine for producing the same goods is not permitted in view of Government's new industrial policy in respect of metropolitan areas. In particular, there are industries where technological changes compel change of products, but this product-mobility is rendered extremely difficult in the metropolitan areas under the newly formulated Industrial Policy.

36 We believe that the real intention of Government is to prevent additional congestion and conglomeration of industries in the urban centres. We welcome this intention, but where an industry by effecting product-mobility or by adding additional balancing equipment does not cause such problems, they should be permitted to diversify or expand. Otherwise they may virtually be forced out of existence or rendered "sick" by a rigid interpretation of the new industrial policy.

37 On the same principle, Government should allow liberal expansion of a company in the contiguous land which was already in possession of the Company for its future expansion plans, etc. provided the proposed expansion does not involve any pollution hazards. The growth of recently established industrial estates will otherwise be retarded. This is particularly true of industrial areas like Okhla, Guindy, Ambattur etc. The expansion or activities of a company should be permitted if it does not cause serious pollution problems.

Net Block: Debt Ratio

4.38 The Stipulation about the net block : debt ratio in addition to existing debt: equity stipulation is, in the opinion of the Committee, onerous. This has wrecked many a good proposals even where such projects were to be located in backward areas. The Committee agrees that adequate fresh equity/internal resources have to be associated with any new project. This is already controlled by the stipulations on debt-equity ratio and by the institutional requirement of minimum promoter's contribution. A further condition /debt about net block:/ratio is needless and this practice should be abolished.

Small Scale Sector

4.39 The Committee is of the opinion that in the long run, the best way of promoting small scale industries is to provide them with positive incentives rather than through the use of negative protectionist instrument of reservation. Complementarity rather than reservation has in fact been instrumental in bringing about a significant growth of the small scale sector. However, if in the short run such a policy is considered necessary, it should be ensured that techno-economic feasibility studies covering cost and quality consideration precede each such reservation lest such a policy may lead to production shortages. The Committee feels that if the decentralised production in the small scale sector does not come into existence on a mass scale and in an organised manner, the economies which may be temporary or illusory inherent in such size, may nip in the bud the huge growth possibilities of production through medium and large units leading to scarcities. Safeguard should be provided against such eventualities. In the opinion of the Committee, the large and small scale sectors are essentially inter-dependent on each other and also help in expanding the entrepreneurial base through ancillarisation. Experience has shown that growth of large industries which serve as Feed Stock for the small scale

industries or those which farm out parts and components to small scale units, helps in promotion of these small industries.

40 It has been brought to the notice of the Committee that when a small unit graduated to a medium size in the reserved field, after it crosses the limit of Rs 10 lakhs investment, it suddenly attracted the provision of licensing and becomes ineligible for all incentives. This may lead to a tendency towards fragmentation into smaller units in a surreptitious manner. This stunts their real growth potential, and retards their urge to develop R&D, exports, quality production and efficient management. The Committee is of the opinion that a suitable threshold gestation period should be permitted to such units during which the unit should be allowed to adjust and diversify and given incentives during such intervening period.

41 Our attention has also been drawn to the problem relating to COB Licences especially those arising out of the reservation of products for the small scale sector. Here the problem is of Definition. The reservedlist gives the names of the products which are vague and often have to be interpreted further. Such clarifications are generally not easily forthcoming from the DGTD with the result that an entrepreneur is uncertain as to whether the products manufactured by him are covered under the reserved list for which he has to obtain a COB Licence or his DGTD registration would continue to remain valid. It is, therefore, recommended that on a reference by the applicant, DGTD should be able to provide a clear cut answer on such questions of interpretation of the list to avoid delays and inconvenience. As a further safeguard, we also recommend that such issues be referred to the Development Council for a final determination.

*** ***

CHAPTER V

FOREIGN COLLABORATION

The approach to foreign technology has been rigid. It needs to be more flexible. On the economic plane, the two principal objections to free import of technology have been that (i) it would lead to a drain on our meagre foreign exchange resources and (ii) it would hamper local R&D.

5.1 The Committee feels that neither of these arguments is valid today. Moreover, the outgo of foreign exchange on account of lumpsum payments, royalty etc., is a negligible fraction of the total national foreign exchange expenditure, perhaps in the vicinity of Rs.75 crores or so per annum. It is also a fallacy that inflow of technology hampers indigenous R&D. Far from it, such imports help tremendously our R&D and assist us in keeping abreast of the technological race. The approach should not be to reinvent the wheel but to build on and adapt for local conditions, technology available elsewhere often at reasonable rates. In this respect India could learn a great deal from countries like Japan and now even China.

5.2 Import of technology is, therefore, exceedingly important for India in its march towards the goal of self-reliance and to enable it to make a dent in the export markets. Technology cannot be had just for the asking. Technology suppliers consider their know-how as their most valuable asse They can be persuaded to part with it only if a mutually beneficial and satisfactory business relationship can be established.

5.3 Government must realise that technology transfer is essentially a business relationship. No company would be willing to offer its technology for outright sale or for a small royalty for a limited period, which is not only grudgingly agreed upon but is also heavily taxed. The restrictive approach, in sanctioning adequate compensation

for technology inflow, is impeding effective utilisation of this extremely valuable international asset.

4 All the nations in the world, including the United States, which is, generally, regarded as the world's richest repository of technology, are heavily dependent on each other. No country by itself can be technologically self-sufficient in all respects.

5 Presently, collaboration agreements are, generally, approved for a period of eight years and royalty payments are also limited. The technology world over in certain industries is making rapid strides, rendering the technology of today obsolete tomorrow. For such industries, the talk of repetitive import of technology is fallacious. During the limited period of collaboration agreement, the receiver which of technology gets know-how /may have already become obsolete when the collaboration period come to an end. As such, a relatively long period for collaboration agreement, or easy renewals, is essential if the latest technology is to be made available to the Indian industry on a continuing (this is not repetitive) basis. In this context, the Committee strongly feels that time has now come to allow foreign collaboration agreements even beyond ten years, at least, in certain identified fields, where Indian entrepreneurs could acquire subsequent know-how, designs, etc. and benefit from the continuous R&D. The aquisition of new technology would provide a fillip to further innovation and increased production. Valuewise, the benefit of imported technology is many times more than that of importing raw materials and components which are immediately used up.

6 For some time past, there has been a talk of the centralised purchase of technology. The Committee has carefully considered this issue and is of the opinion that such a measure, far from being beneficial, would be detrimental to the long range interest of the country. For example, even where the centralised purchase of

technology is limited to only drawings, designs and specifications, the question of competition will have to be considered. Most engineering units, for example, produce goods which are distinct and, even where there are many units manufacturing similar products in an industry, the different individual companies do not necessarily make identical products. For them, centralised import of technology would mean that all of them, in an industry, would have to switch over to manufacture one particular product, for which drawings and specifications would have been imported by the centralised agency. In the Committee's view, this is neither desirable nor in the national interest.

5.7 There are also complaints about the meticulous examination of the terms of foreign collaboration agreements at different levels causing unnecessary and undue delays in approval of these agreements and the speedy implementation of the projects thus gets a set back resulting in a number of disadvantages to the entrepreneurs and the project itself. To avoid this common obstacle, the Committee would like to recommend that in respect of foreign collaboration, broad guidelines and parameters should be evolved, within which, the entrepreneur should be free to operate. The piece-meal and negative scrutiny of each item is time-consuming and delays implementation of the project. Only identified select clauses like royalty, export ban, arbitration etc. should be scrutinised. Similarly in high technology and sophisticated fields, the period and royalty payment terms should be liberal in Foreign Collaboration Agreement. In the field like electronics, India is losing the race. It is, therefore, necessary to review the whole policy relating to investments, developments, sources of foreign collaboration etc. to keep abreast of current developments. It has been brought to the notice of the Committee that horizontal transfer of technology is not practicable and deterred foreign collaborator

from offering know-how. Further, induction of foreign technology should be permitted for implementation of turn-key projects.

Foreign Technicians

8 There is also a paramount need to streamline the procedure for facilitating the employment of foreign technicians who have to come to India according to approved foreign collaboration agreements. It is alleged that the process of getting permissions for such technicians involves as much as 16 to 20 weeks in the normal course and an additional 10 weeks whenever even small changes are made in the original permission received. Since these foreign technicians are invited for crucial and specialised jobs like commencing a production line or setting right a break-down, etc., undue delays for granting clearance cause adverse repercussions on the fructification of projects. If a particular foreign technician selected is not available because of these delays, a fresh search becomes necessary which further delays the project leading to a vicious circle. Further, for inviting foreign technicians, a sanction has to be taken each time the technicians visit India. It is, therefore, necessary that once a foreign collaboration project is approved, the Indian entrepreneur should be left free to call foreign technicians as and when required without seeking approval each time.

9 The Committee, therefore, recommends that the foreign collaboration agreement should broadly mention the man-month requirement about foreign technicians. This should be considered as an aggregate without going into the scrutiny and clearance for each individual proposal which involves considerable delays.

Buy-back arrangements

5.10 At present there is a distinction between technical collaboration and financial collaboration. In today's context it is necessary to have further distinctions i.e. foreign collaboration with buy-back arrangement and foreign collaboration without buy-back arrangement.

In case of collaboration with buy-back arrangement, it is obvious that certain conditions which are otherwise deemed necessary for normal collaboration arrangement will not be accepted by the foreign collaborator e.g. guidance and restrictions of export to particular territories where collaborator might have a good market hold. Moreover, in such cases, the collaborators might also offer plant alongwith technology so that they can be sure about the quality and the quantum of production which they want to buy back. Such proposals should be expeditiously approved because

(a) on account of rapid technological changes in the world market coupled with high inflation, several plants are available at attractive prices.

(b) such plant's owners are interested in remaining in the marketing field for the products for which they have acquired a hold on account of their experience, whereas they can compete in costs manufacturing on account of the high labour costs.

(c) they have acquired experience of manufacturing which can be easily transmitted to the Indian entrepreneur.

Such an arrangement is very attractive from our country's point of view. It ensures transmission of technology, availability of inexpensive plant and committed exports.

Because of the interest to buy back the production, the commitment of the foreign party to such a project is very strong. Other developing countries are at present taking great advantage of such offers from developed countries. We need to gear up our administrative procedures so that we can also take the best advantage of such offers.

Import of Capital Goods

11 Recently, the policy for import of capital goods has been liberalised and in some cases, certain concessions have been given in customs duty. While every effort has to be made to promote production of capital goods and the conflicting claims of indigenous machinery manufacturers and the users have to be reconciled, delays in clearance of applications for capital goods need to be meticulously avoided. Currently, the applicant has to advertise, in sufficient detail all the specifications, make, model, desired period of delivery and stating interalia whether the connected drawings are already available etc. The option of the intending importers of capital goods to make advertisements is limited to the Indian Trade Journal and the Indian Export Service Bulletin. Considerable difficulty is experienced in getting the advertisements in these journals and the publication is also delayed. Our detailed recommendation in this connection is given elsewhere.

12 An information log book should be kept with the DGTD of development in each major industry, and the officer concerned to make visits to factories both within the country and abroad, to acquaint themselves with the latest trends in the technology.

13 On account of technological revolution in the international field, several second hand plants are available at attractive prices and these can give good quality

goods for Indian consumers for a long period. The cost of new equipments is prohibitive.

Today in Europe several industries are declining because of their high cost of labour and pollution control requirements. For example, textiles is one of them. For the Textile Industry, which has lagged behind in modernisation for various reasons in the last 20 years, the availability of second hand plants in good conditions, presents an excellent opportunity. The brand new machines will cost much higher than such second hand plants in good conditions. The technology gap of Indian new machines and these second hand imported machines is often negligible and in several cases in favour of second hand imported machines. In the context of the Indian conditions, such second hand plants and machines could be gainfully used at a lesser cost.

5.14 However, in our view the present procedures for the import of second hand plants are inflexible and impractical. These machines are sold on the basis of first come first served and there are buyers from other developing countries. Unless our procedures give the necessary freedom to choose and make firm commitments quickly, such opportunities can not be exploited. The Committee, therefore, feels that definite broad guidelines should be furnished regarding minimum information to be supplied about the import of second hand machineries to avoid delays. Our specific recommendation in this regard are given elsewhere in this report.

5.15 Sometimes the foreigners are prepared to send the second-hand machinery under a bank guarantee for renovation in India as the cost of renovation abroad is prohibitive. They are also prepared to extend technical assistance for this purpose on easy terms. The

Committee feels that such proposals should be considered on merits. Indeed the Committee would also suggest that wherever possible, the import licence holder should be permitted the flexibility to import new or second-hand machinery whichever is more economical to him.

*** ***

CHAPTER VI

INDUSTRIAL LICENSING PROCEDURES

(General Observations)

6.1 The Committee would like to record a few general observations regarding delays occurring at various stages, based on the impressions gathered by it, during its dialogue with the representatives of various organisations and also discussions among members of the Committee.

6.2 First of all, there is a general complaint that multiple clearances required under the various Acts particularly under the I (D & R) Act, the MRTP Act, etc. cause considerable delay as the clearances are never given at one go despite the existence of an MRTP-cum-Licensing Committee for the purpose. It is a general view that this Committee should be empowered to give clearance not only under the I (D & R) Act, but also under the MRTP Act and there is no need for the DCA to undertake again similar type of scrutiny. The Committee is of the view that this 'Holier than thou' status given to the D.C.A. has been the cause of many of the delays. It is a fact that many a worthwhile projects of great national importance get inordinately delayed at the DCA level involving huge loss to the nation. The Committee feels that every procedure for taking a group decision involves trade off between the benefits of wider participation in the decision making process and the costs of securing them in terms of delays. This fact needs to be recognised.

6.3 Secondly, ad-hocism is often resorted to even where policies are clear cut and precise. For example, MRTP companies are permitted under existing policy to enter non-Appendix I items on substantial export obligation. But the obligations are often scaled upwards unilaterally.

6.4 Thirdly, repetitive or commonality of scrutiny by various agencies on similar or near similar aspects of the proposal is a major factor for delays. Plethora of administrative divisions/agencies are presently dealing with various

aspects of the application for industrial licensing, consequently, leading to certain degree of duplication or overlapping of mandates causing avoidable delays. Such diffusion and dispersal of overall responsibility for administration of various aspects among variety of agencies together with frequent shifting of personnel which takes place, give rise to numerous administrative and other difficulties. This necessarily needs to be rectified.

.5 Fourthly, it is represented to the Committee that restrictive nature of the licensing is aggravated by imposing onerous assortment of conditions on the applicant. Rigorous conditions are often imposed making it difficult for the applicant to comply with them. This, many times, results in abandoning the project. Further, a host of conditions by different agencies at different times are imposed resulting in chronic delays. In the Committee's view, all conditions should be imposed invariably at one point i.e. at the SIA level to avoid such delays.

.6 Fifthly, one of the causes of delay emanates from late signing of the minutes by the Minister. This needs streamlining.

.7 Sixthly, delays also occur because sometimes the decisions are taken on the basis of internal instructions of which the applicant is totally ignorant. As far as possible, such secrecy needs to be avoided. Clear cut and specific guidelines should be enunciated to help and guide the entrepreneurs.

.8 Seventhly, it is pointed out to the Committee that SIA could not function as an effective agency primarily because it is merely a channelising agency to co-ordinate the work of various departments/ministries, but has itself no mandatory powers or authority to deal expeditiously with the

applications. The Committee feels that this is a major weakness of the system which should be removed.

6.9 Eighthly, more often than not, the good intentions of the administration get lost in the labyrinth of forms, procedures and precedents. Excessive control and centralisation of authority within departments, lack of communication between various levels of administration about problems faced by entrepreneurs and, in general, slow process of decision making are problems besetting the system. It is, of course, a herculean job to bring about any sudden transformation in the system, nonetheless, there is enough scope for possible improvement. While the sense of corporate responsibility enjoins the private sector industry to be responsive and co-operative, it is also necessary that the concerned Government Departments reciprocate such responses.

6.10 In what follows, the Committee has given its views on the general procedural aspects of industrial licensing.

Procedures

6.11 To expedite the investment and to avoid prolonged procedural delays involving years, the licensing procedures were streamlined by the Government with effect from 1-11-1973. The essential objective of the new system is to issue various clearances within the well defined time targets.

6.12 The implementation of the new system of Industrial Approvals is placed under the overall supervision and guidance of an Inter-Ministerial Committee of Secretaries viz. the Project Approval Board (PAB). Existing approval committees such as the Licensing Committee, Foreign Investment Board and the Capital Goods Committee function as Committees of the PAB. The PAB directly deals with the composite applications. In order to facilitate

the co-ordinated and timely disposal of licensing and MRTP clearances, a joint licensing-cum-MRTP Committee has also been formed.

13 The PAB and other approval committees are serviced by the Secretariat for Industrial Approvals (SIA). The SIA is responsible for receipt of applications, processing them through concerned appraisal committees and for issuing the final orders of Government in each case to the applicant within the prescribed time limit.

Decentralisation

14 A suggestion was made to the Committee for decentralisation of the industrial licensing approvals. According to this, the Administrative Ministries should be authorised to process the applications for industrial licences for industries falling within their respective jurisdiction and to grant approvals so as to make them responsible for fulfilment of targets etc. Under this scheme, the SIA is also expected to undertake overall co-ordination and collation of requisite information. Further, the items where mor than one Ministry is involved, the Ministry of Industry should be the focal point.

15 The Committee examined in detail the various alternatives in this regard and feels that both in law and in practice such a proposal is not feasible. This may also not fit in under the present legislative framework of the IDR Act. Further, in actual practice the idea does not sound practical and attractive enough and may bring in certain inconsistencies as, for similar type of applications, different criteria would be applied by different Ministries. There is also a danger that under such arrangement objective appraisal of the project may not be done and the subjective element of each Ministry may dominate the processing of the applications. With its fairly long experience, the SIA has now developed a good expertise and its accummulated learning, knowledge of the processing and co-ordination will

prove immensely useful in examination and expeditious clearances of the applications. On the contrary, the Committee apprehends that the delegation of powers of processing and appraisal of the licensing applications to the respective Ministries may involve delays.

6.16 However, as suggested subsequently, the Constitution of Screening Committees in each administrative Ministry will be of considerable help to the entrepreneur in knowing at the earliest the likely conditions to be imposed on his proposal. This early "Warning System" is endorsed by us to which reference has been made by us in the subsequent chapter. This is the type of decentralisation we would like to recommend which, we hope, meets, at least partly, the point of view of those who pleaded before our Committee for a decentralised licensing system which as explained earlier is currently neither desirable nor legally feasible as it will involve amendments to the I (D & R) Act.

Minutes of Licensing Committees

6.17 The delay in the disposal of applications also occur due to delays in signing of the minutes by the Minister and sometimes it is pointed out that it could be even to the extent of 2 to 8 months and the applicant remains totally in the dark about the fate of his application. Considering the fact that the signing of the minutes by the Minister of Industry has its own advantages as it carries weight with the other administrative Ministries and Departmen the Committee feels that after the licensing committee meeting the decision could be very well communicated to the applicant within 30 days.

Conversion of Letter of Intent into IL

6.18 The Committee also invites reference to RSG's recommendation that conversion of Letter of Intent into an industrial licence should be made only after necessary approvals are given by the financial institutions apart from other conditions. The Government have accepted this

suggestion. The Committee feels that its implementation may cause further delays in granting industrial licence. The Committee, therefore, suggests that the conversion of letter of intent into an industrial licence should not be linked with securing the necessary approvals from the financial institutions to avoid further delays.

DCA Examination

19 It is observed by the Committee that major delay in clearances is, generally, caused due to detailed and time-consuming scrutiny undertaken by the DCA in respect of applications involving MRTP clearance. This has proved to be a stumbling block in granting timely clearances. The Committee fails to understand why inspite of the existence of the Licensing-cum-MRTP Committee, an applicant has to await a whole chain of clearances all over again from the DCA under the MRTP Act. After careful consideration of the issue, the Committee feels that the Licensing-cum-MRTP Committee should examine the applications requiring MRTP clearance as the DCA representative is nominated on this Committee and no further independent scrutiny is necessary at the DCA level.

Emergence of new Government Agencies

20 The continuous multiplicity of national socio-economic objectives present not only problems of delay as stated earlier, but also brings into existence newer agencies, or more accurately new sets of legislations etc. which are instrumental in increasing these delays. Though our plans and policies remain broad-based, an attempt is made to achieve targets through discretionary and ad-hoc controls. In such a situation, application of one set of controls has a tendency to make necessary other sets as well. Since the policies, plans, legislations and administrative procedures are worked out separately, co-ordination between them at the operational level becomes difficult. Thus it comes as no surprise to the Members of the Committee that almost

all the representative Chambers of Commerce are agreed that though SIA has, undoubtedly, served to save time, through its role of co-ordinating the various clearances, the time so saved in a number of important cases is lost due to the fact that a number of other Agencies/Ministries/ Institutions come at a later stage to enforce their own criteria and conditions before sanctioning the project. In particular, our attention is drawn to three important agencies which, after the Letter of Intent is issued, and, indeed, in some cases even after the Industrial Licence is granted, again begin a close scrutiny of the very project for which in theory all clearances are secured, except those from the financial institutions. This has been elaborated below.

Commonality of Examinations

6.21 As stated above, delay inevitably occurs due to imposition of various conditions at different stages of processing an application e.g., the SIA imposes conditions PQR and the DCA also imposes conditions XYZ. The imposition of different sets of conditions in a piecemeal manner hampers the project considerably. It is, therefore, suggested that all these conditions should be imposed at one stage at the SIA level to avoid delays.

6.22 Delay in processing an application also occurs due to repetitive processing by the various agencies. We have already noted above one such area of commonality as between the processing of major projects under industrial licensing and their processing under the MRTP Act. This commonality also appears in case of the financing of projects which is a matter of not concurrent but successive scrutiny by the SIA, the DCA, the Controller of Capital Issues and the financial institutions. The Committee feels that, putting the financial institutions aside, the first three agencies should have concurrent processing.

23 Such a commonality is also in evidence in the area of technical processing. An application has to go through multifarious agencies. Instead of sending copies of industrial licence applications to various technical agencies like CSIR, DST etc., there should be a comprehensive list from the indigenous angle prepared by CSIR and DST in conjunction with the DGTD. This list could be annually reviewed by them and the DGTD should be guided by this list for approving FC, CG applications etc. This will obviate the need for to and fro consultations with the various technical agencies.

24 Another significant area is in respect of examination of proposals regarding mergers and amalgamations. The specified authority examines such proposals. The DCA representative is nominated on this body, but the DCA again examines such proposals independently. Inspite of detailed questioning and evaluation etc., the matter thus hangs in balance.

25 From what has been stated above, it is quite clear that industrial licensing qua industrial licensing seems to involve only a relatively small part of the total time period to dedicate to the final fructification of all the clearances required for a major industrial project.

Co-ordination through SIA

26 While we are extremely grateful to the Ministry of Industry to permit us reflections and recommendations in areas outside the field of the industrial licensing, we feel that this chain of clearances in a manner currently operated constitute the negation of the very objectives that brought the SIA into existence. It is no part of this Committee's recommendations that SIA should be given the final overriding powers in this whole area; we accept that the SIA is fundamentally a co-ordinating body, and where it seeks to overpower the decisions of the relevant administrative

Ministryc concerned in a particular project or indeed of any other agency, such as, the Department of Company Affairs, the change called for will be so radical as to be almost non-acceptable to Government as a whole. In the opinion of the Committee, co-ordination is the most fascinating yet most challenging intellectual exercise to be conducted by the SIA. No agency or institution can attain its goals without adequate co-ordination among its units or functionaries. Authority and responsibility, though to a limited extent, have to go with this function of co-ordination.

6.27 Therefore, while we do not seek that the SIA be given overriding executive powers, we do plead that its co-ordinating activity and effectiveness be considerably strengthened. We, therefore, urge that even for a start the following features be made more evident and explicit :

(i) The SIA should alone be the body to be contacted by a prospective licence applicant. The latter need not do the "corridoring" in the different Ministries in the Capital. As stated earlier, at any given point of time, the SIA should itself be able to state normally where the files are, and it should not be necessary for the applicant to himself chase the files from one Ministry to another.

(ii) The SIA should ensure that at its various Licensing Committee meetings representatives from different Ministries who attend and participate in the meetings have adequate powers to commit their Ministries on the projects under examination. It has been found that the different Administrative Ministries invariably do not send their senior personnel as a result of which there is a considerable dilution in the co-ordinating activity of the SIA. While one can never be rigid about this representation for obvious reasons, it should generally be ensured that

the representatives of the different Ministries/ agencies which constitute the relevant licensing committees should be persons who are in a position to state, within the time span allocated to them, their specific view point on a particular industrial project under consideration.

(iii) The SIA should take the deadlines seriously and strictly enforce them. Several Members of our Committee have argued, as stated earlier, that henceforth if the SIA fails to receive in time, the comments of the different administrative Ministries, then such a failure on the part of the latter should be taken as a sign of a 'positive' or 'no objection approach'. Perhaps, reality may not permit such stringent obligation, but we do plead that after a first reminder, which in turn should give a reasonable deadline, any failure of the administrative Ministry must be taken as a sign of positive response and the application should be dealt with accordingly.

Rejection not our aim

28 While our Committee is naturally interested in suggesting specific measures to expedite the clearances insofar as they fall within the realm of industrial licensing, it must be stated straightaway, that our emphasis on living up to a particular deadline or dateline does not mean that we are more interested in the procedures than in the projects. We are fully aware that a negative side effect of our proposal may well be a tendency on the part of the administrative Ministry or any other agency to respond in a negative manner. Our idea in vesting the SIA with the authority to live up to deadlines and to enforce such deadlines is not to secure readily a spate of negative responses. Hence, it is to be hoped that our suggestions will not be taken too literally as to create impediments

to the rapid growth of the industry. This point needs all the more emphasis as it is the popular belief in the country that penalties either present or potential may await those in power who take positive decisions quickly. Hence, in making our appeal for a "deadline approach" we do hope that the results will be in favour of a positive but not a negative response.

Sachar Committee's Report

6.29 Our Committee deeply appreciates the extremely useful recommendations made by the Sachar Committee in a variety of areas pertaining to the orderly growth of industrial development within the country. However, we are constrained to observe that it's recommendations in respect of what may be called a "Compulsory reference to the MRTP Commission" together with other recommendations in the same category viz. restrictions on inter-corporate investment run sharply counter to the thrust of our recommendations. The Sachar Committee has recommended that the following proposals should be compulsorily referred to the Commission:

(a) Proposals from dominant undertakings for manufacturing goods in which it is dominant; or

(b) Involving capital outlay exceeding Rs 5 crores; or

(c) Where objections have been received or there is more than one applicant.

6.30 The recommendations at (b) and (c) above may mean that the Government have to refer to the Commission many more cases in view of the low investment stipulated and the likely objections, even on flimsy grounds. Besides, there is bound to be more than one applicant for a project which on the whole far from simplifying and expediting clearances would cause further delays and distort even

more the basic economics of a project by the threat of new conditions sought to be imposed afresh under the MRTP Act. This will also completely put out of gear the working of the SIA within the prescribed time schedule. The Government, therefore, should have a second look before accepting the above recommendations of the Sachar Committee.

.31 Our entire preoccupation has been to establish first and foremost the framework, the parameters within which each major industry will be permitted to grow, but once this framework is established, there should be no further impediments in the matter. Hence, we find ourselves unable to comprehend the recommendations of the Sachar Committee in this particular area; far from reducing it will considerably lengthen the period over which an industrial project will come into fructification. This will totally defeat the very purpose for which our Committee has been formed; whatever saving effected in time in one area, namely of industrial licensing will be more than lost in another area.

.32 Perhaps, there could be a meeting ground. The MRTP Act is administered by the Department of Company Affairs and we would, therefore, suggest that in the evaluation of the Inter-Ministerial Policy framework for each major industry, the Department of Company Affairs should be closely associated. They should enunciate the parameters on the basis of relevant data made available to it by the different Ministries or agencies. Once these are enunciated, the MRTP companies should be allowed to function without any hindrance if these parameters are adhered to. In this manner instead of an elaborate network of scrutiny to be established at a later stage, we shall once again have the benefit of a considerable saving in time at a later stage, even though in the initial stages, we repeat, the preparation of such an Inter-Ministerial policy framework will doubtless involve considerable time

and effort and innovative skill among different Ministries involved.

6.33 Our scheme seeks to give substance to the planning for reaching decisions and of imposing conditions on a licence application in a concurrent manner instead of the sequential manner in which most major projects are today compelled to pass through.

6.34 One final point; we have deliberately made no mention of the relatively small or medium sized industries in the preparation of the above Inter-Ministerial blue-print; this is for the obvious reasons that we presume that as few obstacles as possible will be placed in the case of projects between Rs 3 crores and Rs 20 crores - indeed our plea has all along been that licensing upto Rs.15 crores is not required at all.

Licences Reviewing Committee

6.35 A number of suggestions were made impressing upon the Committee for a need to have a licences reviewing body for reviewing the rejected applications and to give an opportunity to the aggrieved party to represent against an unfavourable decision in the matter.

6.36 Under the IDR Act Rules, a Sub-committee of the Central Advisory Council was constituted which reviewed all licences issued, refused, varied, amended or revoked from time to time. It also advised the Government on the general principles to be followed in the issue of licences. This Sub-committee was to report the results of the review to the Central Advisory Council. To the best of our knowledge this body is not active.

37 The Committee has examined the proposal in great detail and feels that it would be very useful to have a sustaining mechanism in the shape of a body like an Advisory Committee to have a continuous interaction between the Government and the industry. The Committee, therefore, is of the opinion that Government should form an independent body called the 'Licences Reviewing Committee'. This body should be represented by non-officials including reputed economists and other professionals, business small, medium and big, Chambers/Associations, and consumers. It can review the actual implementation of the Policy in terms of number of licences issued, rejected, implemented, etc. This body could serve as a valuable tool for advice and communication and inspire greater confidence in the whole process of evaluation and administration of policies. It should function within the SIA to ensure proper co-ordination and communication.

Role of the DGTD

38 Late receipt of comments from the DGTD is reported to be a major contributory factor for delay at the SIA level. The DGTD is the Central Technical Advisory body and services almost all the Administrative Ministries in evaluating proposals from investment and technical angles. Its broad functions, interalia, include micro planning and development of individual industries, monitoring capacities and production build up and to ensure adequate technological growth. The primary function of scrutinising the proposal from technical angle constitutes 80% of its work load whereas the processing time allowed to it is reported to be only one-third of the total, that is just 30 days. After liberalisation of import policy, however, contrary to expectations, the work load of DGTD has considerably increased. The major reason is that, the JCCI&E at the ports don't have adequate technical expertise necessitating reference to the DGTD for customs verification from the technical angle. To facilitate this work, it is understood that the DGTD have recently opened regional offices

at a number of places drawing heavily upon the existing technical personnel in the DGTD which has affected its staff strength at the headquarters.

6.39 In view of the multi-dimensional role of the DGTD as the Central Technical Wing of the Government of India, and to ensure timely disposal it is highly imperative that this organisation is strengthened adequately with technical personnel and equipment support to enable the DGTD to send their comments in the specified time.

6.40 One of the impediments in the way of timely disposal by DGTD, is the lack of cohesion between the DGTD and the DC(SSI). While the DGTD has all relevant data about the organised sector, the DC(SSI) conspicuously lacks this data on Small Scale Sector. In the technical field also, the DC(SSI) may not be strong enough and takes time to ascertain capability and capacity in the Small Scale Sector. The Committee therefore suggests that there should be proper co-ordination between the DGTD or any other agency and the DC(SSI) in collection of data which may help speedy implementation of the policy and procedures.

*** ***

CHAPTER VII

INDUSTRIAL LICENSING PROCEDURES

(Specific Proposals)

Background Information

1 Industrial licensing procedures are a reflection of the Industrial Policy prevailing at any time. Delayed clearance of applications, and weaknesses in the prescribed system, generally stem from the ambiguities and lack of clear cut guidelines in the policy itself. The Committee has also observed that multiple clearances by different screening agencies and approving bodies as already outlined lead to abnormal delays.

2 The SIA is the central agency for receiving licensing applications circulating them to various Departments/Offices concerned, convening of licensing Committee meetings, subsequent processing of minutes, issue of approvals, monitoring reduction of delays and follow up of letters of intent and individual licences. The responsibility in regard to examination of cases continues to remain with the Administrative Ministries and the Technical Authorities.

3 Currently, there are five principal 'Approval Committees' :

(a) Licensing Committee (LC) for approving non-composite, non-MRTP applications with 19 members and chaired by the Secretary, Industrial Development, Ministry of Industry.

(b) [illegible]

(c) Foreign Investment Board (FIB) for processing foreign collaboration applications with 11 members, chaired by the Secretary, Ministry of Finance, Department of Economic Affairs.

(d) Capital Goods (CG) Committee for reviewing import of capital goods over Rs.25 lakhs, with 8 members, chaired by the Secretary, ID, Ministry of Industry.

(e) Project Approvals Board (PAB) to examine composite (IL, FC, CG) applications for simultaneous clearances with 10 members, chaired by the Secretary, ID, Ministry of Industry.

7.4 Apart from these, there are other Ministries/Agencies to which copies of applications are to be forwarded for views, comments etc. Within the above framework there are Screening Committees within different Administrative Ministries which undertake preliminary scrutinies of composite applications, MRTP cases and cases above Rs.10 crores.

7.4(a) The Committee appreciates the utility of such Screening Committees on the following grounds :

(i) They help expeditious preliminary scrutiny of a project;

(ii) They help in obtaining details from an entrepreneur on the various aspects of his project;

(v) They indicate the conditions likely to be imposed in case of approvals.

.4(b) Thus they serve as an advance 'Warning System' for the entrepreneurs. This preliminary scrutiny of the screening committees is very useful as it makes the task of licensing committees very easy as all the relevant information is readily made available to these committees at one stage. Thus, no further time is lost in to and fro consultations and communications for obtaining necessary information on various matters referred to above. This also helps the disposal of cases within the prescribed time schedule.

4(c) In view of this, the committee recommends that all the applications for industrial licences should be processed through screening committees in the concerned administrative ministries before they are finally scrutinised by the respective licensing committees. The screening committee should hear the applicant only after the receipt of the DGTD comments.

5 The recommendations of the concerned Approval Committee are submitted for the orders of the Government and thereafter disposal letters (approvals/rejection) are issued.

6 With effect from 1-11-1973, SIA is required to operate within prescribed time limits as given below:

90 days each for IL, FC and CG applications

120 days for composite applications

150 days for applications involving MRTP Act clearance.

7.7 In practice, however, these limits are generally exceeded because of delays in completing scrutiny/ getting comments from the various agencies including the DGTD.

Causes of delay

..8 The existing procedures are such that clearances for number of projects which constitute substantial part of the total investment with forward and backward linkages in the industrial development process are delayed considerably. The total delay may run into years if one includes the delay at the hands of the financial institutions and the Reserve Bank of India.

7.9 An industrial licence application is sent to various scrutinising agencies for comments before the SIA prepares a summary note.

7.10 The delay, however, mainly occurs on account of the non-receipt of comments from certain agencies in the stipulated time. The Committee has examined the list of various agencies to whom the copies of the applications are sent and found that there is enough scope for avoiding delays by minimising agencies. Of these agencies, referenc to the DGTD, the Administrative Ministry, Department of Company Affairs, and the DC(SSI) is necessary as they are the principal scrutiny agencies. The Committee feels that some references do not quite seem to be necessary and hence could be avoided. References, particularly to the Planning Commission, CSIR, NRDC and the Ministry of Commerce (except where export-import angle is involved) could be done away with.

7.11 The Committee suggests the omission of Planning Commission from the above list because it is fundamentally and basically a body with macro-level perspective. In view of its involvement in macro-level planning/target setting, the

involvement in micro-level scrutiny of proposals at the licensing procedures level seems unnecessary. The five-year plan or annual plan targets are available with the DGTD who should take these into account while scrutinising individual proposals. The Administrative Ministry and/or DGTD can, however, provide feedback to the Planning Commission at the post-licensing stage.

12 Delays are also caused because of the following:

(a) Availability of comments of scrutiny agencies just before the meeting of the Approval Committee or in some cases through tabling of such comments only at the Meeting, giving no opportunity to the applicant to reply or clarify.

(b) Delayed submission of cases to the Committee due to non-receipt of replies from the scrutiny agencies.

(c) Imposition of various conditions on the applicant regarding choice and scheme of finance, location, pollution, indigenous angle etc.

13 Special reference needs to be made to the Department of Company Affairs and the delay at this level:

(a) Too much time is taken by DCA for processing the applications due to lengthy and detailed scrutiny even in respect of the projects which are in the public interest.

(b) Inability to take a quick, clear view on the MRTP angle with particular reference to dominance.

Committee Proposals

7.14 The Committee would recommend the following with the object of achieving built-in mechanism of quick disposal in the system of clearance.

(a) As already stated earlier, reduction in the number of scrutiny agencies like CSIR, NRDC and Planning Commission from the list of agencies will help in saving time. The DGTD which is a central technical authority could effectively handle the technical scrutiny of the proposal. Considering the fact that the DGTD services several administrative agencies/bodies involving voluminous work, the Committee recommends that to enable the DGTD to adhere to the time schedule, it should be given adequate personnel and equipment support.

(b) Meetings of the various committees should be held on schedule each week, with no scope for postponement/change because of the absence of or the non-availability of the concerned Chairman. For this purpose, alternative arrangements should be made so as to maintain continuity and avoid delays.

(c) In case the Minister's signature on draft minutes is not available, the power should be delegated to the Minister of State to sign the minutes and in the event of non-availability of both, to the Secretary, I.D.

(d) Ad-hoc internal instructions on policy and procedure should be discouraged and clear cut policy guidelines should invariably govern processing of applications.

Industrial Licensing Cases (non-MRTP)

7.15 Specific points given below relate to non-MRTP cases:

(a) The time-limit, as pre-determined and specified, should be adhered to and SIA should process the

applications without waiting for queries/comments beyond the time limit.

(b) Complete case summaries need to be presented to enable full, prompt consideration of cases and decision-making.

(c) Cases of automatic conversion of Letters of Intent into Industrial Licences should be cleared by the SIA without reference to the Administrative Ministry concerned; 30 days should be the time limit for such clearances by the SIA. In the post-letter of Intent stage, no additional conditions should be imposed for granting industrial licence.

(d) As long as the application has been made within the validity of the LI, there should be no need to extend the LI before converting the LI into an IL

MRTP Cases

16 The additional procedural requirement for MRTP cases is that a separate application, under the MRTP Act, has to be simultaneously submitted to the Department of Company Affairs.

17 Processing by the Department of Company Affairs in the context of the MRTP angle, involves delay. This Committee has recommended delicensing of industries except dominant undertakings, items reserved for the small scale sector and the public sector. The implementation of this recommendation would result in reduced references to the Department of Company Affairs which will help expeditious clearance.

8 The Committee also recommends that the Department of Company Affairs should not impose independent conditions on the applicant. Conditions, if any, to be imposed should come from the licensing-cum-MRTP committee which would take

into account the views of various scrutiny agencies/ministries including the DCA except for cases referred to the Monopolies Commission.

7.19 For FERA companies, in case the LI stipulates dilution of foreign equity, it becomes one of the effective steps to be undertaken by the company. The interpretation of what dilution implies is vague. This leads to delays as parent Ministries insist on the actual dilution before treating the condition as having been fulfilled. As long as the company applies to the CCI for permission to dilute foreign equity with the required proposals, this should be taken as the company having fulfilled its obligation for dilution and conversion of LI into IL should not be delayed on this account.

Foreign Collaboration cases

7.20 In terms of procedures, the Committee suggests the following:

(a) While the initial foreign collaboration application is monitored and processed by the FCI section of the SIA, approval of the draft agreement is left to the Administrative Ministry concerned. The draft is provided by the applicant after FIB sanctions the application. Experience indicates that the Administrative Ministry takes 4 to 6 months and also tends to make their own stipulations even though the application has been passed by FIB. Once the broad parameters and guidelines are enunciated as highlighted in our chapter on foreign collaboration, there should not be any need for imposition of sequential conditions so that clearance can be expedited.

(b) It further recommends that the final agreement, duly approved, should be available to the applicant within 45 days of the FIB decision.

(c) FIB meetings should be held once every 15 days and should not be deferred. The applicant should be advised to be available at these meetings for discussion, if required.

(d) The terms and conditions for employment of foreign technicians are included in approved foreign collaboration agreements. The procedure for obtaining permission for such technicians to visit India involves a time span of 16 to 20 weeks normally and an additional 10 weeks if minor alterations are to be made in the original permission. Further, to invite foreign technicians sanction has to be obtained each time the technician visits India. The Committee recommends that clearance for visit of foreign technicians should be given within 15 days as their presence is essential for repairs and installation of equipments. Further, the foreign collaboration agreement should cover, broadly, the requirement of foreign technicians in the form of total man months requirements. This will obviate the need for scrutiny of each individual proposal covered under the agreement.

CG Clearance

21 According to the information available, CG applications are now being cleared well within 90 days largely because of the comfortable foreign exchange position and liberalisation in the import policy towards capital goods. Suggestions for further simplification of procedure are given below:

(a) The procedure for advertising in the Indian Trade Journal and the Indian Export Service Bulletin involves a waiting period of 45 days for response from indigenous manufacturers. There is also considerable time lag between the submission of the advertisement and actual printing.

The Committee would recommend that prospective importers be allowed to advertise in Industry Journal concerned with Capital Goods e.g. Engineering & Metals Review with concurrence of the DGTD. The Committee would also recommend that the present ceiling of Rs.7.5 lakhs be raised to Rs.10 lakhs or 5% of the total capital cost of the project.

(b) Items,originally disallowed on indigenous grounds but later cleared on the production of regret letters from indigenous suppliers, should be allowed to be freely imported. The DGTD list of CG items, allowed to be imported under free licensing, should remain in force for a period of 18 months as against the present validity of 12 months. This will give entrepreneurs greater flexibility in the choice of goods.

(c) Indigenous clearance is valid for 18 months from the date of CG approval. Since there are considerable delays in the issue of import licences because of non-sanctioning of foreign exchange loans by the financial institutions or delays in conversion of LI into IL, indingenous clearance lapses for no fault of the entrepreneur. Therefore, the validity period should be extended upto 24 months in respect of credits other than free foreign exchange.

(d) Currently, importers of second hand machines have to mention specific machines, specific supplier and specific country of origin in the application and the licence is granted only for those particular machines This creates two major problems:-

(1) Because of the time lag involved in the sanction of application and issue of licence, the particular machine may have been sold by the time the license is received. Unlike new machines, which are generally manufactured after firm commitment, second hand machines are up for sale at the earliest opportunities.

(2) If one asks for a firm option upto a certain time, the offeror, if at all willing, will include the cost of warehousing, interest and risk in the price of the machine and, therefore, it would become much more expensive. Thus, under the present procedure, Indian buyers are severaly handicapped in the purchase of second hand machines. Further, if an Indian Buyer is not tied to a particular machine or supplier, his bargaining position will improve considerably.

The Committee, therefore, suggests that there should be only "upper bound stipulations" in the licence namely;

a) The machine should have a specified capacity and should not exceed the price mentioned in the application.

b) It should have a reasonable residual life of say 10 years which should be certified by a chartered engineer.

For the rest, he should be free to choose the source of the make of the machine, the model etc. This will give the entrepreneur great deal of flexibility in choosing the best available machines at the most attractive prices. This will, therefore, serve a wider national interest of obtaining second hand machinery easily and saving considerably in the capital cost of the projects.

(e) It has been observed that some delays take place during the issue of import licence by the CCI&E. In

the current procedure, a copy of the final approval decision taken by the CG Committee and a copy of the application is forwarded to the CCI&E. This causes the usual registration and docketing delays. In order to avoid delays at the CCI&E level, the Committee suggests that one copy of the import application should be submitted directly by the applicant to the CCI&E so that if any deficiencies are observed, they could write to the party and get such clarifications quickly. Thus, by the time the CG Committee clearance is obtained, the CCI&E will have all the required information from the applicant. Further, the CG import licence should be issued within two weeks of the production of the letter of consent by the applicant from the financial institutions like ICICI, IFCI, etc.

(f) A more serious problem facing almost all importers of capital goods is that the CCI&E hold that they cannot issue an import licence without consent from the financial institutions. The financial institutions, on the other hand, insist on having CG clearance. The Committee suggests that the CCI&E be allowed to grant the licence without awaiting approval from the financial institutions as this would expedite matters. The CCI&E should clear the application with the proviso that the import licence is issued subject to availability of foreign exchange loan.

(g) In cases where circularity arises, the authority of CG clearance should be taken as adequate for the purpose of clearances from the RBI for remittances of first instalment of know-how fees.

(h) It is reported to the Committee that the Economic Advisor's office of the Ministry of Industry, instead of restricting its function to allocation of the foreign exchange, invariably goes into the detailed examination of the application, thus duplicating the process which has already been completed by the sponsoring

authority. Moreover, in case of Supplementary Licences, the Supplementary Licensing Committee Group is supposed to do the evaluation. This avoidable duplication of the procedure results in undue delays and unnecessary inconvenience to various small and medium industries. The Committee, therefore, suggests avoidance of such duplication if such is the fact.

Adequacy of equipment in the SIA

22 The Committee has also come across one important snag in the efficient functioning of the SIA. Though it has no direct bearing on the policies or the procedures, it is important from the point of view of the need for adherence to the prescribed time schedule in the SIA. A lot of time seems tobe spent in cyclostyling, typing, etc., which delays the preparation of minutes, making copies of application and circulation of the same among various scrutinising agencies.

23 The Committee, therefore, strongly recommends adequate equipment support to SIA by providing it with the latest copying devices like the photocopying machines, automatic cyclostyling machines, electric calculators, scanning machines etc., which would considerably improve its efficiency of operation and consequently save time.

Approvals Committee:

24 The Committee would request Government to seriously consider whether or not the present system of having three separate licensing committees should be continued in the future. In the first instance, even as they are currently constituted, their composition is more or less identical. Secondly, if in the scheme suggested by us, only such projects, which have a far reaching qualitative and quantitative significance in the Indian economy are put up for clearance from the angles of both industrial licensing

and monopoly legislation, then it may be deemed more expeditious that one centralised body should deal with the issues raised by such major projects for which licence applications are sought.

*** ***

CHAPTER VIII

AMENDMENT TO THE MRTP (CLASSIFICATION OF GOODS) RULES, 1971

The Committee is constrained to state that just as some of the recommendations of the Sachar Committee have threatened to impose very substantive delays in the fructification of industrial projects, so in a different direction, the new draft rules to amend the Monopolies and Restrictive Trade Practices (Classification of Goods) Rules 1971 may also become, quite unconsciously, a severe impediment to the industrial development of the country.

8.1 Let it be recognised in all fairness that once the principle of classifying products is introduced, it must logically be expected that with increasing industrialisation implying increased diversity and development of products, there must be at least once in every 10 years a re-examination of the classification of industrial products. The Committee, therefore, does not challenge on grounds either of economics or of equity, the right to introduce changes in such classifications with reasonable lapse of time.

.2 Nevertheless, the Committee feels very strongly that the new draft classification does not obey what could be normally accepted as the test of rational classification. In determining the market for a particular product, several test cases have been recorded in the anti-trust legislation in the advanced countries as to what constitutes 'the market' for a particular product.

3 The acknowledged principle in determining whether an undertaking is dominant or not, by reference to the "end-use", "Interchangeability" or "substitution" principle has been totally ignored. This principle was established in the

celebrated case of United States vs E.I.du Pont de Nemours & Co. (United States Supreme Court, 1956, 351 U.S. 377, 76 S.Ct.994, 100 L.Ed.1264), cited in FEDERAL ANTITRUST LAWS - CASES AND COMMENTS (Third Edition) by S. Chesterfield Oppenheim and Glen E. Weston, at p.251, that is to say, the relevant market by reference to which an undertaking could determine whether it was dominant or not, should include not only the manufacturers of that particular commodity but the manufacturers of all commodities which can be used as a substitute for that commodity. In the Du Pont case, Du Pont manufactured 75% of the cellophane marketed in the market. However, the relevant market for the purposes of determining whether Du Pont was dominant or not, was held to be the flexible packaging material market, that is, all other flexible packaging materials comparable to and usable in substitution for, cellophane were taken into account. Of this enlarged market, Du Pont only had 20%, and, therefore, the Court held that it was not a dominant undertaking by reference to the flexible packaging material market, despite the fact that it did manufacture 75% of the cellophane in the country. This principle of determining the end-use or inter-changeability of products by reference to all products which could be used in substitution for a product manufactured by an undertaking, is the reasonable and correct principle upon which the dominance of an undertaking should be determined.

8.4 As a solution to the inequities and problems inherent in the Rules, the correct and fair principle to adopt would be the "end-use", "interchangeability" and "Substitution" formulae, instead of attempting to classify goods as has been done at present and is proposed to be done in the draft Rules. The adoption of these principles can alone, in our opinion, establish, as a matter of fact, whether a producer is dominant or not. The artificial sub-division of categories of goods with no reference to their end-use or to products which are interchangeable with them, would make a number of units dominant when, in fact, they are not so.

8.5 Firstly, and obviously, imports must be included and exports excluded from the definition of "the market". Secondly, production in the sample sector should also be taken into account in ascertaining "dominance". But no less importantly is it accepted that the final economic test of what constitutes "a market" must be the end-use to which the product or products are put.

8.6 Indeed, the end-use classification requires very legitimately that even when products of different industries serve one and the same end-use, then "the market", in fact, embraces the entire gamut of such "substitutable" products. To recall the case mentioned above, cellophane paper belongs to the realm of plastics, while wrapping paper belongs to the category of "paper and allied products". The two fall in totally distinct industrial groups, yet they serve one and the same end-use, namely, packaging. Hence, it has been upheld in the anti-trust laws of the United States of America that in recognising whether or not the share of a particular product is "dominant", the total market shall be conceived to be not merely that of a product belonging to a particular industry, but also to a product belonging to a different industry but which all the same compete with each and one another as they serve the same end-use.

.7 Far from moving into the realm of rational classification, the latest draft moves, in fact, in the reverse direction and seeks to make obviously competitive products belonging to one and the same end-use industry and serving one and the same end-use as different industrial products.

.8 Thus, innumerable anomalies present themselves. One can readily understand the distinction made between toilet soap (No.314.1) from washing soap (No.314.2) as they in most cases serve different end-uses. One is simply at a loss to understand, however, how the 10 different types of "yarns" mentioned in item 247 can be considered distinctly separate entities. Almost each of them competes directly with each and one another; the economic justification for

making each of these 10 yarns a separate entity does not exist. To take only one more illustration: The synthetic anti-diabetic drugs all aiming to combat diabetes through the use of synthetic ingredients are broken down into 3 separate categories. This defies all logic as it is only too well known that such synthetic anti-diabetic drugs freely compete one against the other. One could multiply these illustrations:

Some examples:

(i) Existing Entry :	375.	Motor Cycles and Scooters and Parts.
		Items
		(a) Motor Cycles
		(b) Scooters & Three wheelers
		(c) Mopeds, Scooterettes, etc.
		Sub-group
	375.8	Parts & Accessories.
Proposed Entry :	375.	Motor Cycles, Scooters and Pa
		Items
		(a) powered two wheelers, viz. motor-cycles, scooters and mopeds/scooterettes.
		(b) powered three-wheeler scooters and motor-cycles.

8.9 The Committee feels that with the advancement in industry, there has been a radical change in its structure. At present, there is no unit licensed to manufacture exclusivel any one of the items mentioned in the existing classification and Government in June, 1978, decided to promote all existing manufacturers of motor-cycles, scooters and mopeds to diversify and manufacture any type of two-wheelers within their capacity, most units thus getting their licences endorsed to manufacturing two-wheelers of all kinds and not only motor-cycles or scooters or mopeds.

Government had also agreed to consider the entire market for two-wheelers as a single entity and, therefore, diversification was permitted. Three-wheelers falling under the existing entry are manufactured by the same technology as two-wheelers and process of manufacture is also the same. The Planning Commission, the Finance Ministry and the Central Board of Excise and Customs and the Sales Tax Authorities also treat these two in a single category. It would, therefore, be appropriate that both the existing entry and the proposed entry be replaced by the following:

375, powered two-wheelers and three-wheelers and parts and accessories thereof.

(ii) Major Group 38 : Other Manufacturing Industries

Existing entry — Sub-Group 387 : Stationery articles like fountain pens, pencils, pin cushions, tags not elsewhere classified.

Proposed Entry — Sub-Group 387 : Articles not elsewhere classified

Items : (a) Typewriter ribbons;
(b) Carbon paper;
(c) Duplicating stencils.

.10 The Committee feels that under the existing rules, the stationery articles mentioned above fall under Group 38 and there was no sub-group. However, under the proposed classification, 3 sub-groups have been formed as mentioned above, whereas in the past, articles made out of paper and other articles were classified stationery articles in 3 sub-groups. This sub-group is not clear. Such classification, it is felt would put unnecessary restriction on business interests. It is our view that reclassification if at all necessary here should be made on

some rational basis. On the basis of products made out of paper such as letter heads, envelopes, paper for office copy, office files, registers, exercise books, carbon papers, duplicating stencils etc; and

(ii) remaining stationery items such as clips, stamp pads, fountain pen, ink, ball pens, adhesive types of ribbons.

Numerous other instances are in vogue in support of maintaining at least the existing classification of goods. Instances mentioned above only highlight the anomaly and are not exhaustive to support the main submission of the Committee.

8.11 The inequities that exist and have been shown in the examples given above, in the present Rules will only be compounded by the proposed new Rules, and the purposes of the Act certainly are not served by the new draft Rules. The new draft Rules make an endeavour to split up into a number of separate categories every group of goods, irrespective of what its end-use would be. The adoption of such rules would therefore seem to be a concerted attempt on the part of Government to get undertakings to register under the provisions of the Act, irrespective of whether they are in fact dominant or not and whether they wield any market power or not. Such units brought within Chapter III of the Act would not then be able to take advantage of the latitude for expansion permitted under the Industries (Development and Regulation) Act. It cannot be the intention of one department of Government which extends liberalisation to industries under one Act, to have them nullified under the provisions of another Act.

8.12 Apart from what has been pointed out above, we would most strongly protest against the proposed clause (vi) of Rule 2(2), which seeks to make an undertaking

dominant even in respect of goods which have not found a place in the proposed draft Rules. This omnibus clause, apart from being totally unfair to a producer, supplier or distributor, is beyond the scope of Section 2(d) of the Act, which requires that such groups of goods must be prescribed in order to determine the dominance of an undertaking. If this clause was valid method of classifying goods, then by that token, no other classification of goods needs to be made. This clause, it is recommended, should be totally deleted.

Specific comments on certain groups of the proposed Rules are given below :

1. The proposed classification in Group 314.5 reads as under :

"Cosmetics and Toilet Aids (Creams, shampoo, hair dressings, hair oils and toilet powder)".

Group 314.5 in the existing Rules reads as follows :

"Cosmetics and Toilet Aids (like creams, shampoo, lipsticks, hair dressings/oils, nail polish, powder, etc.)".

13 The effect of the proposed Group would be to restrict this classification of goods to the items mentioned in the brackets, and every other toilet aid or cosmetic aid would become, under the proposed draft Rule 2(2)(vi), a seperate sub-item in which a company may be dominant. It is submitted that all cosmetic and toilet aids should form one group of items and should not be restricted as proposed in the new Group 314.5. The present Group 314.5 need not be altered.

.4 Sub-Groups 314.2 and 314.8 - These items which cover washing soaps and synthetic detergents are basically

materials for washing clothes. There is no reason why detergents should be classified as a separate item apart from washing soaps.

8.15 Groups 205 to 209 - In the area of bakery products and confectionery, the new Groups seem to make a number of sub-divisions in the Group. It is submitted that all bakery products should not be classified separately. Similarly, confectionery items should form one consolidated group. There seems to be no good reason for making separate sub-items of cakes and pastries (205.3), chocolates (209(a)) and sugar confectionery (209(b)).

8.16 The Committee cannot but express the fear that such a detailed classification not based on any rational economic test, and certainly not on the commonly prevalent test of the end-use, will immensely increase the difficulties faced by several companies in speedily increasing their production in view of the impending fear of being considered as dominant undertaking to be covered under the MRTP Act. This fear is more genuine in the background of the Sachar Committee's recommendation of bringing down the criterion of dominance from 33 1/3 per cent to 25 per cent which is likely to cover a number of undertakings. Some companies even may not use the facility of normally permitted 25 per cent increase in production for the fear of crossing the criterion of dominance and this will adversely impinge on production. It appears that the Government in formulating the revised classification have not given a serious thought to economic implications of such an important measure vitally affecting the whole gamut of industries.

8.17 Further, Section 21(4) of the MRTP Act provides exemption for an undertaking producing same or similar types of goods provided it is not a dominant undertaking. The proposed reclassification and the criterion mentioned above would rope in a number of undertakings as dominant

and would practically set at naught the exemption contained in Section 21(4) of the MRTP Act, which is from the Committee's point of view, highly undesirable in the present economic situation as it would serve as a disincentive to the industry.

8.18 With the break-up of each group into sub-groups, items and sub-items in a detailed manner, the administrative burden will also increase enormously resulting in undue delays in dealing with the problems of the industry. The proposed reclassification will only bring in a large number of industrial units under the purview of the MRTP Act thereby nullifying the benefit of the liberalisation in the licensing.

8.19 The Committee, therefore, strongly disapproves the proposed reclassification and feels that the subject matter is of such vital importance that it must be considered at great length by the Development Councils. We have endorsed the recommendation of the Ramakrishna Committee that for every major industry there should be an active Development Council. Therefore, till such Development Councils are brought into existence, we would strongly urge that this subject of Reclassification of Goods be held in abeyance. We believe that each Development Council, consisting of official and non-official experts will be the appropriate body for making a meaningful classification in respect of the goods covered by the important industries in such a manner as not to cause delays and aggravte scarcities.

*** ***

CHAPTER IX

INDUSTRIAL LICENSING AND THE FINANCIAL INSTITUTIONS

The Committee was not surprised that nearly all the representatives of the different major Association and Chambers which it interviewed, felt that whatever be the gains in the saving of time on the narrow front of IL would be more than lost, firstly, by the substantive delays likely to be imposed on the applicant companies by the Department of Company Affairs, and by the even more prolonged delays likely to be caused in the fructification of their projects by the scrutiny from the Financial Institutions. (FIs).

9.1 The Committee cannot say that it has made a meaningful investigation in this area. Shortage of time prevented us from making specific inquiries about the processes and procedures which were believed to be the principal cause of delay in the subsequent disbursement of loans by the FIs.

9.2 Nevertheless, the Committee is unable to accept a view-point presented before it that the obtaining of an Industrial Licence by the applicant company should almost automatically assure it the requisite size and structure of finance required for a particular project. This is because the FIs must make a commercial evaluation of the viability of the project under consideration, and the fact that an Industrial Licence has been obtained, though it would bear testimony to the importance attached by the Government to a particular project, would not necessarily demonstrate its basic economic viability.

Representation on Development Councils, Not on Licensing Committees.

9.3 The Committee is also unable to accept a view-point placed before it that as the FIs now play such an important

role in the eventual fructification of an industrial project, the Licensing Committee or the Licensing-cum-MRTP Committee or for that matter even the Project Approval Board, should necessarily give representation to a high ranking executive representing the major FIs in the country. We appreciate the sentiments behind this request which is based on the belief that if the FIs are involved in the project right from the stage of its consideration by the Government through their various Ministries and Agencies, the licensed applicant, if successful in obtaining an Industrial Licence, would then have considerably less problems with the FIs. By the time the Letter of Intent would be issued to the licensed applicant, it is argued that the FIs would be extremely conversant with the problems of the project in general and of its financial problems in particular.

4 Our own reaction is that the FIs should not be involved in the licensing procedures, as in effect they would eventually claim that the mere representation on any one of the Licensing Committees does not bind them in any way to accept the economic viability of a project; we also feel that the FIs should continue to maintain as much of a business approach and as little of a bureaucratic approach as possible to the fructification of an industrial project.

5 However, we do feel that a representative of the FI should find a place on the Development Council that we have recommended for each major industry. In this manner the FI would both influence and be influenced by the totality of factors that will go into shaping of the specific industry plan on which we have laid so much emphasis in our Report. At this stage, a mere membership of the Development Council would not expose the FI to any commitment, yet it would keep them intimately involved in the basic economics of the "plan" contemplated for every major industry.

Convertibility A Major Impediment

9.6 The Committee has been assured that the FIs have in recent years considerably cut down the delays involved in the financial scrutiny and approval of projects; the Committee also appreciates the innovativeness shown by most FIs in coping with major policy problems. It has to be recorded, however, that a major impediment to the early fructification of major industrial projects lies in the principle of the convertibility clause which is sought to be enforced on the companies seeking finances. The negotiations regarding the clause entail considerable delay. If the motive behind the enforcement of the convertibility clause is not political, it would not be difficult to frame formulae wherein a particular FI or their Consortium could partake of the prosperity of the concerns to which they have rendered financial assistance. For example, in the present scheme of convertibility, the FIs are seen as having the best of both the worlds; during the gestation period, when no dividends are paid to the shareholders, the FIs continue to receive the rate of interest. When, however, the project does fructify, the FIs enjoy additionally all the fruits of the risk which the shareholders have taken during the gestation period of the project. Even so, if the fundamental idea is to make the FIs co-sharers in the prosperity of the assisted concern, it is possible to conceive of formulae under which increasing prosperity for the shareholders can also bring about increasing gains for the FIs.

Tie up of Financial Assistance with Licensing

9.7 The Committee notes that the Ramakrishna Study Group has accepted, with some qualifications, the recommendations made by the Narasimhan Study Group that in order to promote better co-ordination of licensing with financial arrangement, it should be provided that within six months of the issue of Letters of Intent,

the entrepreneur should be expected to make a complete application, and that the Letter of Intent should lapse if these Institutions are not approached within this period (in cases where a project requires their assistance).

9.8 The Committee agrees that once a Letter of Intent is issued to an entrepreneur, he should get in touch at once with the FIs in order to save time both for himself and the financial institutions. Indeed this process is already being recommended by the FIs to prospective entrepreneurs, and is, therefore, to be welcomed. However, the Committee must record its apprehension that a period of 6 months may prove short to enable an entrepreneur to fulfil not only the conditions which may be sought to be imposed on him by the Licensing Committee concerned, but also to negotiate a number of agreements with various parties. In particular, where the import of capital goods and technology is involved, the entrepreneur may not himself be fully aware of the exact time period required for the final settlement of the terms and conditions with the foreign collaborators, and indeed subsequently to obtaining of the Letter of Intent, certain changes having financial implications may have to be effected. Hence it is not wise to call upon an entrepreneur "to make a complete application" to the financial institutions within a period of 6 months.

.9 Again, the Committee cannot agree with the further and final recommendation of both these Groups that "in order to provide further coordination of licensing with financial arrangement, the Letter of Intent will have to be converted into an industrial licence only after necessary approvals by the financial institutions." For major projects, the financial institutions even today take anything between 160 and 180 days to complete their financial scrutiny. Further, as explained above, during the period between the Letter of Intent and the Industrial Licence, several key elements and variables of the project remain

to be finalised by an entrepreneur. It will be difficult on the one side for an entrepreneur to approach the financial institutions within 6 months of the date of the issue of the Letter of Intem with a firm set of data regarding his project and it will be even more difficult for the FIs to accord approvals within this period of 6 months.

9.10 We are sure that in making this recommendation both the above Study Groups have been motivated by a sincere desire to expedite the fructification of industrial projects as also to weed out superfluous applications, but the threat that a Letter of Intent will be converted into an Industrial Licence, only after necessary approvals by the Financial Institutions, is not a reasonable way to recognise the practical difficulties that confront the entrepreneurs.

9.11 Incidentally, it is not quite clear from the Ramakrishna Study Group (para 4.5) whether the period of 6 months is the period the Study Group has in mind when it recommends the necessary approvals by the Financial Institutions for the conversion of a Letter of Intent into an Industrial Licence. But even if this is not so and a longer period is contemplated, we would plead that the various measures, an entrepreneur has to take to convert his Letter of Intent into an Industrial Licence, are already so onerous that it would be wrong to add two other conditions for obtaining this licence, namely to make a complete application to the financial institutions and perhaps even to obtain their necessary approvals within a period of six months.

Legal Delays Significant

9.12 An important area of delay to which the attention of the Committee was drawn lies not so much in the scrutiny of the basic economic viability of the project concerned, but in the verification of the assets and its legal formalities which have to be completed before the

loan is finally committed. The Committee appreciates that the FIs have shown commendable sense in granting 'bridging loans' in such cases, but the fact remains that the delays tend to be inordinately long on the legal side, and perhaps this area needs to be looked into with some care.

FIs As Instruments of Licensing Liberalisation

9.13 It must also be recognised that the FIs are continuously called upon to alter the guidelines in a number of areas with the different segments of Indian industry; indeed, we ourselves have argued that fiscal and financial incentives must be extensively used not in addition to, but as a substitute for the IL system. In such a scheme, the FIs can be made to play a major role in softening the rigours of regulation now implicit in the system of IL. For example, instead of banning entry into specific fields for a particular segment of an industry and thus indulging in a negative approach to industrial growth, the correct approach would be to encourage new entrepreneurs, by means of fiscal and financial incentives. Thus, instead of having the present system of 'banned areas', the guidelines given to the FIs could provide for a positive incentive to new entrepreneurs as part of converting the present policy of weakening the strong into a policy of strengthening the weak.

9.14 Having said this in favour of using the FIs as a powerful weapon of reducing the rigours of industrial licensing in its present stage, we would stress that the guidelines issued to the FIs should not continuously change so as to create an atmosphere of uncertainty in the planning of projects.

Conclusions

9.15 To sum up, the Committee does not claim any expertise in the areas of co-ordination between industrial licensing and the financial institutions, where substantive delays are allegedly caused by the elaborate scrutiny by the FIs. Nevertheless, the Committee would like to put on record the following conclusions, arguments in respect of which have been elaborated above.

(a) The Committee does not accept the view point that the grant of industrial licence must automatically carry with it an assured source of finance from the FIs.

(b) The Committee does not approve of a suggestion that a representative on behalf of the FIs should sit as a member of any one of the Licensing Committees.

(c) The Committee would, however, like a representative of the FIs to be associated with the deliberations of the Development Councils to be set up for each major industry.

(d) The Committee would advise caution against accepting the recommendation that entrepreneurs who have obtained a Letter of Intent, should "make a complete application" to the financial institutions within a period of 6 months or that a Letter of Intent should be converted into an Industrial Licence only after necessary approvals by the financial institutions. These suggestions do not adequately take into account the practical difficulties involved both for the prospective entrepreneurs and for the FIs.

(e) The Committee believes that if the genuine purpose of inserting the convertibility clause is not political, then formulae can be evolved whereby the FIs can increasingly participate in the prosperity of the concerns they have assisted through other means. At present, the convertibility clause not only acts as a great drag on private sector investment but is also a time-consuming affair, as considerable negotiations are involved in arriving at the terms of convertibility.

(f) The FIs should seek to strengthen in substantial measures their legal aspects, particularly regarding verification of assets which today threaten to impose considerable delays in the final disbursements of loans.

(g) The Committee strongly recommends that the FIs should be used as a powerful instrument to dismantle some of the regulatory features of the current Industrial Licensing system. In accordance with the overall recommendation of the Committee that fiscal and financial measures be used as far as possible to substitute the regulatory features of industrial licensing, the Committee believes that instead of having, say, a policy of "banned areas", so central to the current system of industrial licensing. Government should encourage small/new entrepreneurs with a variety of fiscal and financial incentives given through the FIs.

*** ***

CHAPTER X

INDUSTRIAL LICENSING AS A POSITIVE INSTRUMENT OF BALANCED GROWTH

The Committee would invite the attention of the Government of India, and, indeed, of the policy makers and the moulders of public opinion in the country, to the possibility of using the system of IL not as a negative code of vetos and prohibitions, but as a positive instrument rewarding companies for achieving certain socio-economic goals.

10.1 Instead of loading the IL system with too many goals, the reverse process could also be contemplated under which after certification from the relevant (State and/or Central) Economic Authority concerned, a particular enterprise could be permitted to expand its capacity or to manufacture a new product almost automatically. All that would be required in such a case is an appeal to the relevant Licensing Committee for endorsement within a maximum time period of one month, subject of course to the certification of the above-mentioned Economic Authority.

I. Easily the area on which we would lay the greatest emphasis is that of Research and Development. These efforts and expenditures can culminate in a number of fruitful results; they may improve the quality, durability and other technical requirements of the products manufactured; they may improve the processes by which the product is manufactured, and such an improvement would, of course, involve the utilisation of indigenous raw materials or indeed of maximising employment opportunities by way of applications of appropriate technology; and last but not the least, such R & D efforts can result in the invention of new products.

It has been pointed out repeatedly, and it bears repetition here, that our current system of IL, particularly as applied to the MRTP companies, does not encourage R & D in the very segments of the industrial society in which the maximum capital has been invested.

We would argue that both the system of IL and MRTP legislation be so changed as to ensure rewards to companies whose R & D efforts have culminated in any one or more of the above fruitful results. At present, there is no guarantee whatsoever that a company which has innovated a new process beneficial to the economy in the sense either of reducing price and/or employing more

that the system of IL be used to reward companies which can demonstrate to the relevant State and/or Central Authority in the area of environmental hygiene that it has made considerable expenditures in the task of preventing pollution and/or which has innovated new processes for preventing pollution.

In this connection, our Committee appreciates that Government by their Press Note No.12(51)/LP/77 dated 16-7-1977 have indicated that where "industrial undertakings holding industrial licences for manufacture of certain items and desiring to use their

which has for a period of three consecutive years shown that in a particular product, the value of its exports has exceeded ten per cent of the value of the total output of such a product, then such a firm must almost automatically be permitted to expand its capacity and production in that particular product by at least $2\frac{1}{2}$ times of its exports. Once again, there would have to be a reference to the Licensing Committee accompanied by a certification from the relevant Ministry - in this case, the Ministry of Commerce - of such an achievement, but once such a reference is made, the Licensing Committee should endorse the corresponding increase in the licensed capacity in a period never exceeding one month from the date of reference.

IV. A fourth area where industrial licensing can be converted into a system of rewards lies in that of what might be called "the drive towards ancillarisation". As far as is possible, consistent with the high standards of quality to be aimed for the final products manufactured by a large industrial unit, it should be encouraged to go in for the maximum volume of purchase of its components and ancillaries from the small-scale units. One needs to recall here that one of the great strengths of German and Japanese industries is their high components of "bought-out items" Henceforth, our industrial licensing system should evolve mechanisms and formulae whereby units, which already have a proven record of "ancillarisation" or are committed to such a programme, should be permitted, as an incentive, an automatic expansion in their licensed capacity. Here is another way in which industrial licensing can secure through the use not of the stick but of the carrot, the integration of the big with the small

so that what benefits the former benefits simultaneously the latter.

Industrial licensing as part of a system of monitoring industrial production

10.2 The Committee would also recommend to Government that the phenomenon of stagnation, which was particularly evident during the ten years from 1966-67 to 1976-77, should not be allowed to be repeated in future. In almost every major item of production, with the conspicuous exception of fertilisers and pesticides, the country has experienced periods of stagnancy for almost five to nine years. It is hardly surprising, therefore, that the rate of growth in both industrial production and industrial investment during the decade has tended to be sharply lower than that recorded in the previous decade of 1955-56 to 1966-67.

10.3 We, therefore, recommend that if in any major industry, the figures of production show a stagnancy for a period of more than three years, then the system of Industrial Licensing (IL) must be made so operative as to immediately bring into existence new additional capacities so that the stagnancy be removed. In other words, the system of IL shall be so operated as to be a positive instrument of economic growth with a built-in monitoring system, which ensures that stagnancy of production for a period of more than three years shall not prevail. We are, of course, aware that such liberalisation of industrial licensing cannot by itself generate new investments and increase industrial production; too many other complementary factors must be present. But at least, one major impediment would have been removed.

Industrial licensing as an instrument of industrial growth

10.4 Currently, it is the Ministry of Industry that is held responsible by the Nation for establishing and securing an annual rate of growth in industrial production. However, it would be almost platitudinous to state that the whole constellation of factors that are responsible for bringing about an increase in industrial investment and hence in industrial production, are not within the command of this Ministry; even more conspicuously, most major industries are totally outside the jurisdiction of the Ministry of Industry. Nevertheless, the responsibility to the country of achieving a certain annual rate of growth in industrial production as a whole does rest with this Ministry.

10.5 It is, therefore, recommended that henceforth, each year, prior to the inauguration of the financial year, the Ministry of Industry reveals to the entire country not only the overall growth rate sought to be achieved in the coming financial year, but the sectoral and sub-sectoral growth rates that form the overall growth rate. These will have to be indicated to the Ministry of Industry by the other administrative Ministries which have specific industries within their jurisdiction. In this manner, the country is made aware of not only the targets which are established in the overall sense but the specific targets which are sought to be achieved by each Economic Ministry.

0.6 In this manner, not only will the responsibility of the Ministry of Industry come to be shared by the different concerned Ministries, but all the administrative Ministries dealing with industry and infrastructure facilities will be proclaiming their targets, and holding themselves responsible for the achievements of such targets, insofar as, they pertain to the areas and industries within their jurisdiction.

10.7 This will not be an empty essay in target setting; it will be part of the overall exercise of the Rolling Plan insofar as it is applied to industry and infrastructural facilities. It will be a part of an attempt to endow the economy with a techno-managerial approach; the targets of each Ministry will be made known, together with the requirements of various inputs - managerial, financial infrastructural and foreign exchange resources, etc.

10.8 The relevance of all this to the system of industrial licensing is that instead of different administrative Ministries showing either rank or mild indifference to the securing of Industrial Licences, the attempt to achieve the targetted rates of growth will hopefully make every administrative Ministry an active instrument in chasing the Industrial Licences sought by the applicant companies, be they in the Public Sector, the Private Sector, the Joint Sector or the Co-operative Sector. The studied indifference currently shown by some administrative Ministries to the early availability of IL, and the absence of any concrete homework relating to the policy framework in major industries can at least be combatted by making each concerned Ministry accountable to the Nation in terms of the targets established by it. If the target so established is very modest, it will hardly reflect well on the administrative Ministry concerned; if on the other hand the target is too ambitious, it will soon be found out to be hollow.

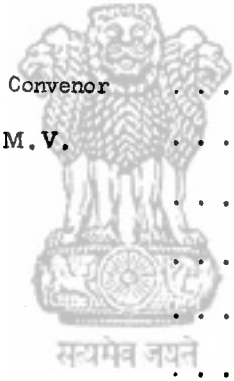
10.9 Each administrative Ministry will thus be called upon to make an assessment of its own capabilities and limitations, and will simultaneously be called upon to take an active interest in ensuring that their growth-targets will be achieved through the grant of licence applications for substantial expansion or for establishment of new undertaking. In such a scheme, it will not only be the SIA that will be "chasing" the various concerned Ministries, but it could also be the other way round. "Co-ordination" among and between the administrative Ministries concerned will thus derive substance, and the interaction amongst

these Ministries will now become more meaningful, lessening thereby, the procedural load of the SIA, and giving each administrative Ministry a vested interest to a set deadlines for itself in the pursuit of its growth targets. This process will make "Co-ordination" not merely a matter of procedural time-reduction but also a mechanism for securing what in effect should be the real purpose of industrial licensing, namely a sharp increase in industrial production.

Conclusion

The Committee is firmly of the view that the Ministry of Industry has a vital role to play in the promotion of industrial development within the country. It also recognises that such a development will have necessarily to be guided by the goals set before the country by the Government in power. The Committee would, however, like to see a system under which the most important area of the achievement of the Ministry of Industry lies not in that of licensing or of regulating the industrial growth of the country. Instead, in a manner so ideally set by the example of MITI in Japan, the Ministry must become a powerful engine of industrial development. In this Chapter we have suggested several areas in which even the system of industrial licensing can be made to shed its negative and regulatory characteristics, and come to acquire a positive, developmental role. For this, the Committee would suggest that the Ministry of Industry carefully studies the operation of MITI in Japan and see what are the corresponding features of its operation which can be deemed suitable and desirable for Indian industry. The Committee would like to think that the Ministry of Industry should come to be looked upon by the various segments of Indian industry not so much as a regulatory body, but

as a positive instrument of industrial growth, harmonising the conflicts between the different segments of Indian industry, and establishing incentives to achieve higher production along socio-economic goals established for the country. The visits to Delhi should be not only for the obtaining of clearances; they should also be for the obtaining of valuable advice and guidance. We are sure that this is the role the Ministry already sees for itself, and we can only hope that our recommendations will help the Ministry to achieve its goal of being a powerful promotional agency of India's industrial development.



Shri Nanda, H.P. Convenor . . . . . .

Shri Arunachalam, M.V. . . . . .

Shri Anubhai, P. . . . . .

Shri Amin, C. . . . . .

Shri Bajaj, R. . . . . .

Shri Doshi, J.H. . . . . .

Shri Jalan, S. . . . . .

Dr. Mehta, F.A. . . . . .

Shri Mirchandani, I.T. . . . . .

Shri Nanda, P.K. . . . . .

Shri Shahaney, R.J. . . . . .

Shri Thapar, L.M. . . . . .

Shri Thomas, T. . . . . .